

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DECUS, INC. and DECUS : CIVIL ACTION
CONSTRUCTION, INC. :

vs.

MARK HEENAN and HEENAN : NO. 16-CV-5849
HOLDINGS, LLC :

PHILADELPHIA, PENNSYLVANIA
January 25, 2018
BEFORE HONORABLE MARK A. KEARNEY, J.
JURY TRIAL

APPEARANCES:

FOR THE PLAINTIFF: OFFIT KURMAN, P.A.
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(The Court resumed the proceedings
at 11:15 a.m.)

THE COURT: Mr. Watson, do you wish to
present an opening statement?

MR. WATSON: I do, Your Honor.

THE COURT: You may proceed.

MR. WATSON: May it please the Court,
counsel, ladies and gentlemen, ladies and gentlemen of
the jury. I should say gentlemen and lady of the jury.
My name is Kevin Watson. His Honor mentioned my
affiliation and my firm and Kate Pettit.

I want to introduce my clients to you, give you
sort of a brief outline of what we hope to present by
way of evidence today, give you sort of a snapshot of
the law that would apply to this case, and give you an
idea of what we're seeking in terms of relief.

First, let me introduce you to Thomas Aloia and
John Sciotto. We struggle with his name. Young by my
standards, but two people who have been in the
construction industry for tens of years. These
gentlemen started a company back in 2013, started by
John, and Thomas joined the company later on.

That company is Decus, Inc. That's the
plaintiff in this case. They had specialized in

1 contracting construction, contracting building,
2 essentially commercial facilities. That's what this
3 case involves, building essentially two or three
4 finished projects and projects that were either finished
5 or not, but mostly commercial facilities.

6 These gentlemen got together for a reason.
7 They got together because they had the synergy that
8 comes from dedication, hard work, developing contacts,
9 developing a name for themselves. They put that synergy
10 together to start Decus and move forward in this market
11 and in the New Jersey market to start a business. It's
12 the American dream.

13 Up until 2016, the American dream was
14 everything that they had hoped for. They had their
15 struggles early. But they were able to build a company
16 that captured a segment of the market that was important
17 to them, and they were executing on their game plan.
18 They were successful, and they had developed a name for
19 themselves that was represented by a logo.

20 That's important in this case. The logo was a
21 Decus logo, and their name Decus, Inc. and Decus
22 Construction, Inc. That's going to be called by His
23 Honor and by us as a trademark. It's a piece of
24 property, if you will, that is personal intellectual
25 property that is personal to the corporations that own

1 it. They had developed that and everything that goes
2 behind it. You'll hear testimony from Mr. Aloia talking
3 about the dollars that he spent developing that
4 trademark and how important that symbol was to their
5 business.

6 This case is complicated in that it involves
7 things that we don't deal with every day, contracting,
8 change orders, applications for payment, labor hours,
9 margins, profit, solar panels, things that we really
10 don't encounter in everyday life.

11 This case is also complicated in the fact that
12 we have those exhibits and those binders that we have to
13 get through. Not all of them. Remember, it's Monday
14 and we have to get you out of here.

15 But there is a lot of very detailed information
16 in these documents that have been pulled through the
17 discovery process, which has taken over two years to get
18 to here. It's complicated in the sense, then, that
19 there's a lot of paper and the subject matter is not
20 every day.

21 I would submit to you that there's a rule that
22 you can use to get through this. It's not so much about
23 whether all of these facts come together to form
24 something cohesive that you can understand. I'm going
25 to make it easy on you.

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1 This case is about integrity. It's about lies.
2 It's about theft, and in part it's about a videotaping.
3 We'll get to that. Lies, theft and a videotaping.

4 My clients claim that Mr. Heenan stole from
5 them claims that he purposefully, with intent, took not
6 just information, but took business opportunities from
7 my client. We'll get into the details. But, again,
8 it's about lies, theft and a videotaping.

9 The story starts on October 19th, 2016. That's
10 when everybody met. Prior to that time, Decus was, as I
11 said, successful, executing work, moving forward and
12 again a successful company. On the flip side, prior to
13 that time, Mark Heenan was on the street.

14 Mark Heenan had worked in the construction
15 industry essentially for his uncle, Hessert
16 Construction, who you'll hear about later, and had
17 worked his way up through the ranks and his uncle had
18 actually given him an ownership interest in certain of
19 those companies.

20 Unfortunately, on August 26th, 2016, something
21 happened. Something happened that put him out on the
22 street. We'll get to that.

23 But when he came to us, when he came to us,
24 when he came to Decus, he said that he had left
25 voluntarily from Hessert and he was looking for work to

1 help this team. My clients were impressed. He gave a
2 resumé that showed 47 projects that he had worked with
3 for Hessert that he had managed, that he had supervised
4 as an owner of Hessert. Mr. Aloia vets that resumé very
5 carefully with him and asks him questions and with all
6 of that they decide to bring him on board.

7 They bring him on board on October 19th, 2015.
8 That was a conversation between the parties, three
9 parties, where they had a handshake deal. His Honor
10 will instruct you later on that, yes, you can have a
11 legally enforceable contract through a handshake. It
12 was a handshake. It was an oral contract. That's the
13 legal term.

14 They entered into an oral contract where
15 Mr. Heenan would come on and work for them in a
16 consulting capacity. In this case, he was supposed to
17 be paid \$750 per week, and he would get a commission for
18 new work that he brought into the company.

19 What was intriguing about Mr. Heenan was that
20 he was a marketeer, very handsome, very engaging, very
21 outgoing, very smart. They liked the way that he
22 presented to potential work. He had, according to his
23 CV/resumé, a wealth of business contacts in the industry
24 that was appealing to my clients because they wanted to
25 take it to the next level.

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1 In fact, he came on board with that handshake
2 deal, which was essentially a probationary deal where he
3 comes on, he works for a salary, essentially, and if it
4 works out, if it works out, let's talk about the next
5 step. Let's talk about the next step.

6 They worked for a period of time. Mr. Heenan
7 came on and worked at a couple of projects. In fact, he
8 was able to bring in through his contacts the three
9 contracts that we talked about, or the judge had asked
10 you about in the voir dire.

11 There are the three projects in New Jersey.
12 There's the Gloucester Data Center project. There's the
13 South Jersey CML Project, and then there's the Dunkin'
14 Donuts project. So Mr. Heenan was able to bring those
15 into Decus. Decus executes the contracts, right, and we
16 move forward.

17 During the same period of time, on a parallel
18 path, Mr. Heenan is having discussions with my client
19 about what are the next steps. "I want to be an owner.
20 I want to be a part of this. I want some stock. I want
21 to be a limited partner. Give me some skin in the
22 game."

23 "Fine. We'll do that." Decus says, "We're
24 happy to talk to you. We like you. We like what you're
25 doing. Let's sit down and negotiate. Let's negotiate."

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1 They sat down and negotiated.

2 You'll hear testimony from Mr. Aloia where they
3 talked about negotiations. You'll see drafts of
4 shareholder agreements. You'll see E-mails back and
5 forth about terms, what should the profit be, what
6 should my ownership be, what should be my duties. All
7 right?

8 Nobody denies that those discussions took
9 place. What's at issue in this case is whether we
10 promised him that he would be a partner and we breached
11 that promise. That's their contention. Our contention
12 is nothing was signed. There was never an agreement.
13 Although there can be an oral agreement, in this case
14 the parties had envisioned a written agreement for the
15 shareholder buy-in, and nobody denies it was never
16 signed. There was never any promise to Mr. Heenan that
17 he would be a partner.

18 We move forward. This is in 2016. Mr. Heenan
19 starts working in November of 2015. He starts to get
20 disenchanted with the process. He doesn't like the fact
21 that he's being asked to work, yet there's no future.
22 We haven't rejected him yet. There's negotiation, but
23 it's not going fast enough for him. Don't ask me why.
24 Don't ask me to get inside his head but something
25 happened. Something turned.

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1 We think that it has to do with this videotape.
2 But at some point he became very embittered. He became
3 very intent on not only moving away from Decus, but
4 taking Decus with him, taking Decus with him.

5 What did he do? How can you take a business?
6 How can you take somebody's business? Well, you're not
7 going to believe it, but he actually went out without
8 any knowledge or authority from Decus and set up a
9 website called Decus. He went out with his own company,
10 Heenan Holdings, and set up a dba in New Jersey called
11 Decus Construction. He went out and cloned, attempted
12 to clone, our website onto his.

13 That's not the best part. The best part is he
14 went to the owners of those contracts and said, "I'm a
15 partner. I'm a principal in Decus. I need you to sign
16 a new contract. Sign this one. It's Decus. The one
17 that says Decus, Inc., scratch that out. It's Decus
18 Construction, dba Heenan Holdings."

19 They said, "Yes."

20 Why? Because he's got them. He's a salesman.

21 So he goes in and he gets all these contracts
22 signed and then guess what happens? By the way, our
23 clients' address is King of Prussia. His address is
24 Cherry Hill. What happens? The work is being
25 performed, the checks are being stroked to him at his

1 Cherry Hill address, Decus Construction. We have the
2 checks. We have them signed by Mark Heenan. He doesn't
3 deny that. He's taking all of the money from those
4 projects and putting them in his pocket. Integrity.
5 Integrity.

6 We find out nobody is happy. Nobody is happy.
7 We'll hear some testimony about a meeting, when we found
8 out, August 26th, 2016 where we sat down, and we said,
9 "Mark, what the hey? You're taking our money. We got
10 to work through this. Give us the money back. Give us
11 the money back."

12 Guess what we did? Did we kick him out? Did
13 we call the police? No. We said, "Give us the money
14 back. Let's talk about it. Let's talk about it. Let's
15 work through this. Okay?"

16 You'll hear about that meeting. He says that
17 we threatened him, that we coerced him, that we somehow
18 forced to give back the money that he had taken from us.
19 That's a claim from us. It's for you to decide whether
20 we coerced him, or whether we reached an agreement by
21 doing that.

22 That brings us essentially to this litigation.
23 We came into court asking the Court to do the right
24 thing; that was to allow us to present to you our case
25 to determine whether or not he breached the consulting

1 agreement by going out and actively interfering with our
2 contracts with others and stealing our money; whether or
3 not he has taken our trademark because when he is
4 signing all these contracts, our trademark is on this
5 fictitious name; whether he misappropriated our
6 trademark; whether he was fraudulent; whether he lied to
7 us. Fraud, intentional misrepresentation of a material
8 fact that we rely upon to our detriment, right?

9 Mark is out there. We think he's executing
10 contracts for us. He's out there stealing our money.

11 There are no dictionaries anymore. It's
12 Google. Definition of "integrity: The quality of being
13 honest and having strong moral principles." Integrity.
14 You know, our parents, our moms, our dads, they taught
15 us that, right? We taught it to our kids.

16 You wouldn't believe Fox and CNN because we're
17 not seeing a lot of integrity into today's society, but
18 this case is about integrity. This Court demands
19 integrity. If somebody is not telling the truth, the
20 judge is going to read the law to you, and you must make
21 a decision, you must judge that. Integrity is
22 important.

23 We appreciate your time. We hope to be quick.
24 We thank you for being here. All we ask is that you
25 listen and that you do the right thing, which would be

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1 to enter a judgment, a money judgment, in favor of our
2 clients with substantial damages that they have incurred
3 because of Mark Heenan's lack of integrity. Thank you.

4 THE COURT: Thank you, counsel. Counsel,
5 do you wish to clear the podium?

6 Ms. LaVan, do you wish to open this time or
7 defer?

8 MS. LAVAN: I'm going to defer until I set
9 my case forward.

10 THE COURT: Certainly.

11 Ladies and gentlemen, I mentioned to you that
12 Defense counsel can do it now, or they can do it when
13 they get a chance for their case. It's entirely
14 appropriate.

15 We now move into evidence, which is what I
16 talked about.

17 Mr. Watson, do you wish to call your first
18 piece of evidence?

19 MR. WATSON: Yes, Your Honor.

20 We call Mr. Mark Heenan.

21 THE COURT: Mr. Heenan.

22 MARK HEENAN, was duly sworn.

23 DIRECT EXAMINATION

24 BY MR. WATSON:

25 Q. Good morning, Mr. Heenan. We've met before.

1 Do you recall being deposed by me?

2 A. I do.

3 Q. You're under oath.

4 Do you understand what that means?

5 A. I certainly do.

6 Q. What does that mean to you?

7 A. What you just spoke about, integrity, and
8 having it.

9 Q. Mr. Heenan, when you met with my clients, you
10 presented to them a resumé of your credentials, the
11 past projects that you had worked on, correct?

12 A. I presented it to John after meeting with
13 him.

14 Q. Is it not true that the information that you
15 provided was not entirely accurate?

16 A. I think that's largely subjective. I think
17 in anything you do in promotion, you know, there's
18 the ability to be honest, but it's also promotion.

19 Q. I'll ask the question again.

20 Isn't it true that that paper that you provided
21 to my clients, which is going to be Exhibit 5 -- and you
22 can turn to that.

23 A. Which paper in Exhibit 5 is that?

24 Q. It's the only paper in Exhibit 5.

25 A. There are four pieces of paper in Exhibit 5.

1 Q. The first piece of paper.

2 What is that, for the record?

3 A. It's the first page of a Curriculum Vitae or
4 a resumé that was prepared by me. I mean, prepared
5 for HSSERT Construction Group LLC by the Marketing
6 director about me.

7 Q. You prepared it?

8 A. No. The Director of Marketing at HSSERT
9 Construction.

10 Q. You looked at it, and you approved it?

11 A. Yes, I did.

12 Q. You gave it to Mr. Sciotto?

13 A. Yes, I did.

14 Q. And Mr. Aloia discussed it with you?

15 A. Mr. Aloia did not discuss it with me at that
16 time.

17 Q. Did he later?

18 A. I do not ever recall discussing it with
19 Mr. Aloia.

20 Q. You heard my opening statement. You heard
21 just now. You were here?

22 A. I did.

23 Q. Is it not true that you went out and formed a
24 dba for Decus Construction for Heenan Holdings?

25 A. After discussion with John about it, yes.

1 Q. Isn't it true that you went out and bought a
2 website domain, www.DecusConstruction.com?

3 A. With no intent to hide it from anybody, yes.

4 Q. Isn't it true that you went out and took
5 contracts that had been executed by Decus and marked
6 out the names or entered your own companies' names,
7 Heenan Holdings, dba Decus Construction or Heenan
8 Holdings?

9 A. At the request of my clients, yes.

10 Q. Isn't it true that you went out and put on a
11 BuildZoom site that you were a principal in Decus?

12 A. I believe I was.

13 Q. Isn't it true that you sometimes told people
14 in the field, some of these owners, that you were in
15 fact an owner of Decus?

16 A. Again, I believed I was. I copied them on
17 the communications in which I said so.

18 Q. Isn't it true that you believed you were an
19 owner of Decus, yet you had nothing signed or
20 executed by Decus that gave you an ownership in
21 Decus, correct?

22 A. I was told that the entity was formed with
23 three equal party shareholders. It wasn't until
24 August 1st or 2nd of 2015 that I discovered by going
25 online that I wasn't a shareholder.

1 Q. I will ask you this question again. Listen
2 carefully.

3 Was there a writing provided to you by Decus
4 that said that you were a shareholder or an owner in
5 Decus?

6 A. In my opinion, yes.

7 Q. What was that writing?

8 A. There were a number of messages and written
9 communications, and I'm sure they will be brought
10 into evidence. I can't remember each exhibit right
11 here, but in which the phrases, you know, references
12 from Sciotto or Aloia to having formed Decus as a
13 clean entity, and referencing their existing lawsuits
14 and the problems that we had discussed, me not
15 wanting to be associated with, as well as Decus' --
16 being equal parties, and others that said stuff along
17 the lines of "a clean slate," and what I believed to
18 be the case that this was a new company essentially.

19 Q. You're referring to E-mail exchanges by the
20 parties, correct?

21 A. Yes, and text messages.

22 Q. E-mails and text messages that you believe
23 made you a partner in Decus?

24 A. As well as the representation that they
25 formed it as equal partners, yes.

1 Q. E-mails, text messages and words.

2 That's what you think gave you an ownership
3 interest?

4 A. Didn't you say something about the handshake
5 contract?

6 Q. That is the consulting contract.

7 A. It works for a consulting contract but not an
8 ownership agreement?

9 Q. You exchanged drafts of the shareholders
10 agreement, correct?

11 A. At a certain point later, yes. They did send
12 a draft, yes, nothing filled out with nobody's names.

13 Q. It wasn't filled out?

14 A. It is a shareholder agreement to me --

15 MR. WATSON: I would direct the witness to
16 answer the question.

17 BY MR. WATSON:

18 Q. Let me ask you again.

19 Was a written shareholders agreement ever
20 signed by you and Decus?

21 A. No. It was signed by me, and it was
22 represented that it was signed by them, but I hadn't
23 gotten a written copy yet.

24 Q. Nobody ever handed you shares from Decus?

25 A. They didn't.

1 Q. Nobody handed you shares of Decus.

2 Isn't it true that you placed a video camera in
3 a bathroom at the Hessert business?

4 A. That's a serious mischaracterization. Every
5 time I walk into a bathroom with my cellphone in my
6 pocket a video camera is in a bathroom.

7 Q. Didn't you take a video camera in a bathroom
8 at Hessert?

9 A. No.

10 Q. Why did you leave Hessert?

11 A. In mid August 2015, I found that my uncle,
12 who was a silent partner and really an investor, was
13 doing an insurance project through the company; his
14 house had an insurance loss. I found that he was
15 asking the employees who had been his employees for
16 years before not to charge money to his job, to his
17 house, essentially defrauding me and maybe anybody
18 else where the people in our construction company are
19 building his house free of charge, so I'm footing
20 half the bill, as well as a number of other issues.

21 He was trying to get back into taking control
22 of the entity because I left his company and then
23 started a new one and took him on with him after leaving
24 and going somewhere else he called me and asked me to
25 come and start a new company, so we did.

1 I built that company up, and then eventually
2 purchased his companies. I was the sole managing
3 member. I was running everything, and he started
4 making --

5 Q. I asked you --

6 A. I'm getting there. There's a little back
7 story to it. His sons had a couple of failing
8 businesses who all grew up in the business with him.

9 Q. The question is why did he leave, not why did
10 he start.

11 THE COURT: I think you gave a couple
12 reasons, but move on.

13 THE WITNESS: Another reason was his
14 attempts to wrangle more ownership interests and
15 renegotiate an ownership deal. It also found that he,
16 as others, I found out, had formed LLCs telling me that
17 they were formed with both our names on them. However,
18 the formation documents were prepared by an attorney of
19 his and named only him.

20 THE COURT: I think the question, sir, is
21 so he did all those things, but why did you leave?

22 THE WITNESS: I left -- I --

23 THE COURT: That's his conduct.

24 THE WITNESS: I found all of these things,
25 and it started a dispute, which, as I'm sure you'll see

1 through this, when you get into a business dispute, two
2 parties see totally different sides of things, and the
3 attorneys make it further apart.

4 I was young. I had a lot of opportunity ahead
5 of me. He was older than me, our horizons were totally
6 different, and so I went out on my own.

7 BY MR. WATSON:

8 Q. Did you try to fire your attorney today?

9 MS. LAVAN: Objection, Your Honor.

10 THE COURT: Sustained.

11 Ma'am, do you wish to examine? He presented
12 him as a witness.

13 Do you wish to provide examine now?

14 MS. LAVAN: Can I do my opening?

15 THE COURT: Not in the middle of his case.

16 MS. LAVAN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. LAVAN:

19 Q. Mr. Heenan, can you please tell the jury a
20 little bit more about your background in the
21 construction industry?

22 A. I grew up in it. I grew up in the business.

23 MR. WATSON: Your Honor, objection.

24 THE COURT: Objection to?

25 MR. WATSON: Scope of direct.

1 THE COURT: No, there's no scope in this.
2 No, no, it's a fair question.

3 Ms. LaVan, you are on direct. You may direct.

4 THE WITNESS: May I continue?

5 THE COURT: Yes, please.

6 You grew up in the business.

7 THE WITNESS: I grew up in the business.
8 My grandfather was a contractor. My uncle, who had six
9 sons, was a contractor. They lived a couple miles from
10 me growing up. All my cousins were my age. My mother
11 worked in the company that was a continuation of my
12 grandfather's, my uncle's essentially, continuation of a
13 company, to be clear.

14 So when I was 13, 14, I was out sealing
15 driveways and painting the numbers on people's
16 sidewalks, charging them five bucks, with a stencil and
17 spray paint. When I was 16, I was old enough. I was
18 allowed to work on construction sites. So I started
19 digging ditches and pushing brooms. I worked through
20 high school and college in the summers, college, winter
21 breaks as well, because I had like a six-week winter
22 break.

23 I'd work in the office learning the estimating,
24 the project management, the administrative things and
25 then also out in the field again, swinging a hammer and

1 pushing brooms, all the aspects of the business.

2 After college I went out to work for a big
3 landscaping firm that did large installations of
4 landscaping and hard scaping. Then my uncle who was the
5 one I had been working with had -- and I mention it
6 because it is noteworthy. My cousins did work with me
7 in the business on and off. There were six cousins.
8 They were in and out. They gave it a whirl, but it was
9 a fit for me.

10 My uncle asked me did I want to come and work
11 for him. I did. I worked initially in estimating, and
12 then we bid a job. It was a good job, a fast-track job.
13 I got it. He sent me out to manage the project.

14 It was a new dining center, student center, at
15 the University of Rutgers over in Camden, their Camden
16 campus. It took about \$6 million over three months. At
17 one point, I was sleeping downstairs in the student
18 lounge, because there was 24-hour around-the-clock work.
19 I just --

20 MR. WATSON: Your Honor, I would just
21 object.

22 THE COURT: No, it's direct testimony.

23 THE WITNESS: Being an uncle, I always say
24 they just throw you in and swim. It's not like a son
25 where they hold you up a little bit. I did that. And

1 then after that, 2009, the market started crashing.
2 This company had 40, 50 people in the office, I believe.
3 I'll give you sort of a magnitude, as I don't want him
4 to accuse me of lying.

5 It started to shrink, because the market
6 started crashing. We were down to ten people. Because
7 there is an uncle and I see all these people for so
8 long, I don't want to be perceived being here just
9 because I'm a relative. It was like a
10 first-in-first-out type deal when they were shrinking,
11 and it was really tough for everybody.

12 So I went and put my resumé out on the street.
13 I got a job with a big construction management firm and,
14 you know, said to my uncle, "I'm going to go take it,"
15 and he said, "Great." It helped everybody with a lot of
16 hard decisions.

17 THE COURT: Before you go to the next step,
18 why don't you lead chronologically so we can follow
19 along.

20 BY MS. LAVAN:

21 Q. Mr. Heenan, when you came back into the
22 Hessert Construction companies, did you come in as a
23 partner with William Hessert?

24 A. Can I clarify? We're getting right there. I
25 want to clarify your question. So I left to go to

1 work for a construction management firm, but a bunch
2 of people were calling me that had been my uncle's
3 clients and wanted me to do work for them still.

4 I was at the construction management firm for
5 only a month before I started taking on a consulting
6 role with them, and I said, "I have to start my own
7 business."

8 He said, "It's 2009. The market is in a tank.
9 You want to go and start your own construction company?"

10 That's what happened. So he wanted me to come
11 back and make me a partner. I formed a business with my
12 uncle as a partner, in part, because a lot of clients
13 wanted somebody young without baggage. A lot of the
14 clients' projects were bigger. I hate to say it, but
15 they wanted somebody who was established and had been
16 there at that time.

17 So we started a new company, which was H2
18 Contracting. You'll hear less about that than Hessert.
19 The new company was H2 Contracting. Over the next
20 couple years, H2 Contracting bought all the functionally
21 operating Hessert Construction companies.

22 So our companies came in and bought his
23 companies from them because at a certain point he didn't
24 have a reason or want any more employees. But I did.
25 So we kind of shifted everybody over into this

1 partnership.

2 THE COURT: Next question.

3 MS. LAVAN: Thank you.

4 BY MS. LAVAN:

5 Q. How did that partnership work, and for how
6 long were you partners with Mr. Hessert?

7 A. It was formed in 2010. We were partners in
8 that entity until actually just recently, but we
9 signed a contract that was effective back as of
10 October of '15. I was the sole managing member and
11 the president. He was essentially a retired investor
12 in the office, maybe one or two days a week.

13 Q. As managing member and being involved in the
14 company, what type of duties and roles did you have
15 in the Hessert projects and the Heenan-Hessert
16 projects?

17 A. To define Hessert projects is kind of broad.

18 But the role I had was everything from -- I
19 mean, I was it. If there was a weekend, if there was a
20 Sunday and something needed to be done before Monday and
21 nobody was there, I would pick up a shovel or a broom,
22 but I was also in the office and transacting all
23 day-to-day operations.

24 There was a list of, I think, about ten things
25 that I couldn't do, which were like sell off assets

1 without his signature as well. Sell off assets, move
2 the company. Everything else was under my control.

3 Q. So, sir, did you serve as an estimator at the
4 Hessert Group and Heenan H2 companies?

5 A. Yes.

6 Q. Did you serve as a project manager?

7 A. Yes.

8 Q. Did you also at times supervise the projects?

9 A. Yes, everything.

10 Q. At some point, did you and Mr. Hessert get
11 involved in a partnership dispute?

12 A. Yes. I began to describe that earlier.

13 Q. The partnership dispute started to occur in
14 2015, correct? Is that true?

15 A. It really started before that. Because in
16 '14, as you may recall from representing me with
17 that, in '14 is when he started forming these other
18 entities and was trying to restructure to take more
19 control of the entities. He formed a group with both
20 our names, but it was really just him.

21 Then he formed H2 Construction Holdings, but
22 what we never did was like sell the one business, H2
23 Contracting, which owned all the other ones, so he was
24 forming like this whole other side.

25 I said, "What are you doing?"

1 He was trying to renegotiate, giving me new
2 operating agreements and trying to have me sell my
3 company that I started over to the new ones that he had
4 started. That led to a bunch of other disputes.

5 Q. As you sit here today, do you think that it
6 had something to do with a big project and contract
7 that your companies had at the time?

8 A. It had to do with a few.

9 Q. Was Mr. Hessert going to benefit greatly if
10 you were no longer a partner of Hessert and H23
11 entities?

12 A. He's the only one. It turns out in hindsight
13 him and his kids, who are my cousins, who were
14 actually in my wedding just before that but
15 subsequently waiting tables and doing something with
16 horse betting at the time, they are now the
17 vice-presidents of the construction company that I
18 started.

19 Q. So at the time was it your belief that your
20 uncle was set to gain, if you were out of the
21 company, a lot of money?

22 A. Yes. In my opinion, millions of dollars.
23 Since then it has proven to be.

24 Q. Do you also believe that he ousted you out of
25 the company because he eventually wanted his sons to

1 take over in your position?

2 A. I think that's a very large part of it. You
3 know, again, this is hindsight. At the time, I
4 didn't even know. Because I was so busy running
5 everything day-to-day and growing this business, I
6 didn't even know that my one company was failing, and
7 the other company had a partnership that, according
8 to him, he was promised but never came to fruition.

9 Of course, six months after I'm gone I hear
10 they are both entering into the construction business
11 having never worked in it, you know, for the ten years
12 or so since they graduated college. So, yes, I think
13 that had a big part.

14 Q. During this time frame that you're referring
15 to when things between your uncle and you started
16 going bad, did you then at that point have some sort
17 of agreement that the two of you were discussing and
18 resolving the matter?

19 A. Yes.

20 Q. Prior to that, was it contentious between the
21 two of you?

22 A. Absolutely.

23 Q. Since that time, has that dispute been
24 resolved?

25 A. It was just resolved actually, thankfully, as

1 a result of my grandfather's death.

2 Q. And your grandfather died about a month or so
3 ago, right?

4 A. Yes, in November.

5 Q. You and your uncle decided at that time to
6 put the past behind you and resolve the matter?

7 A. I decided. The rest of the family told him
8 to go and get in the room.

9 Q. I'd like to refer you to an exhibit, which is
10 the settlement agreement.

11 A. Which is that? I know it back and forth. I
12 can probably recite it to you.

13 Q. It should be in there as 127.

14 A. It's the very last one. Oh, we're done?

15 Q. Did you locate it?

16 A. This one, the Bates Stamp H00026, or the
17 October 18th, 2016 one?

18 Q. Let's talk about all of them.

19 So in October of 2016, right before you had
20 been discussing a partnership with the Decus Group, you
21 had tried to settle this matter.

22 Did you try to settle the matter with your
23 uncle?

24 A. Yes. We had agreed to get a valuation done
25 of the company. It was in our operating agreement,

1 operating shareholder agreement. Those are two terms
2 that I use interchangeably. There's no intent if
3 somehow I say one wrong. But, yes, there's a
4 dispute. We had a meeting with corporate counsel, my
5 attorney, his attorney, and decided to get a
6 valuation of the company done in which he would make
7 an offer, and after the valuation he could buy his
8 assets, I could buy my assets, or the company could
9 do it for either one of us.

10 Q. Although you had tried to resolve the issue
11 at that time, the dispute still went on for a little
12 bit longer.

13 Did the disputes still go on a little bit
14 longer than you anticipated?

15 A. The dispute went on until last month, I said,
16 essentially.

17 Q. So during that time from October of 2015
18 until last month, you and your uncle had been trying
19 to resolve the issue; is that correct?

20 A. I was trying to resolve it. I think he was
21 trying to perpetuate it, because it only benefited
22 him to do so.

23 Q. This had been evidenced by several different
24 agreements that had gone back and forth?

25 A. Yes. Some were signed and not honored by

1 him. None of the contrary is true or was ever
2 claimed, to my knowledge.

3 Q. But eventually the dispute was resolved?

4 A. Yes.

5 Q. In October of 2015, did you give your resumé
6 to John Sciotto or Thomas Aloia?

7 A. It turns out I did.

8 Q. Can you briefly explain how that occurred?

9 A. Knowing that I was having already decided
10 with my uncle that we were going to get this
11 valuation in early October, and we had put in for
12 selection of somebody to do the valuation of the
13 company, when I had been speaking with John waiting
14 on the valuation to be done and everything, and then
15 subsequently I knew John had left a partnership.

16 He had a partnership dispute where he testified
17 in his deposition that they were ousting him, but I knew
18 that it had occurred. I called him to see what he had
19 going on, knowing that I had always wanted -- my market
20 was South Jersey. John is from the West Chester area.

21 I wanted to be able to kind of in ways develop
22 a company with a presence, a company with a presence on
23 both sides of the bridge, because it's very difficult --
24 the Delaware River for contractors, it's very few in --

25 MR. WATSON: Objection, Your Honor. The

1 question was whether --

2 THE COURT: Stick to the question.

3 THE WITNESS: My apologies.

4 THE COURT: Your opinion is of no moment,
5 sir.

6 Next question.

7 BY MS. LAVAN:

8 Q. The question was, you had provided -- let's
9 ask another question.

10 You had a relationship with John Sciotto
11 previously?

12 A. Yes. He had worked at Hessert with me for
13 probably an overlap of a period of, I don't know, six
14 to eight to ten months or so when I was doing some
15 projects, and also time was spent at that time
16 between project management and estimating, and John
17 was an estimator there.

18 Q. Did you have a relationship with Thomas Aloia
19 before that time?

20 A. I didn't know he existed on October 16th,
21 until John told me at the end of our conversation
22 that he wanted to talk to somebody, Thomas, about the
23 deal that we just made.

24 Q. Did you and John discuss your background?

25 A. No. We kept in touch a few times over the

1 years.

2 Q. Mr. Sciotto was aware of what your background
3 was; is that right?

4 A. To the extent that he needed to be. I think
5 in his deposition he said the same.

6 Q. Well, did he work with you at Hessert?

7 A. Yes.

8 Q. In October of 2015, what was your
9 understanding of the relationship between yourself
10 and the Decus parties?

11 A. In October -- so John and I went out. I went
12 to meet with him and talk to him about a project that
13 he had in Brewerytown in Philly. In my opinion, as
14 somebody --

15 MR. WATSON: Objection, Your Honor.

16 THE COURT: No, no.

17 This is why you went to talk to him, right?

18 THE WITNESS: Yes.

19 THE COURT: You may answer.

20 THE WITNESS: In my opinion, and I believe
21 everybody is around, the job was really in the weeds.
22 It was supposed to be done at that time by January 1st
23 or so. It looked and it's now evident that there was no
24 way. I had time on my hands. We were still waiting to
25 do the valuation and everything associated with that and

1 there was a lot of time to be spent.

2 We agreed I would help him out on a part-time
3 basis as much as I could with that job, just because he
4 needed qualified people to analyze some of the issues.
5 So I was basically engaged to help him out on a
6 part-time basis initially, and that job was \$750 a week
7 or something that I would commit.

8 BY MS. LAVAN:

9 Q. Mr. Heenan, what was the name of that job?

10 A. That was the Brewerytown project. I don't
11 know the name of the building anymore.

12 Q. Was that part of the arrangement that you had
13 that was a verbal arrangement via the consulting
14 agreement?

15 A. It's kind of my opinion now that the
16 consulting agreement is kind of questionable in that
17 it seems that there were maybe -- I can't say that.
18 I know there weren't. It was being represented that
19 there were, but the consulting agreement was, yes,
20 that I would help out with that job and it was
21 limited to that job.

22 But at that time John had thrown out -- his
23 relationship with Thomas was very new, and he put out,
24 you know, "We're about to start another company. Let's
25 get through this project," you know, "and get to working

1 together and see how we are particularly. It's great to
2 jump into a fire with somebody, get to know somebody
3 really quick."

4 That's what it was to use that figure and then
5 form the new co. together and see how that works.

6 THE COURT: What was that, sir?

7 THE WITNESS: "New Co.," it's a new
8 company. It's a term people in finance, I heard, use
9 often.

10 BY MS. LAVAN:

11 Q. Was it your understanding in and around about
12 that time that Mr. Sciotto and Mr. Aloia were going
13 to be partners in this new co-endeavor?

14 A. Maybe I can clarify. The Brewerytown
15 project -- I started there. It was maybe a week or
16 so, ten days later that I asked John for a copy of
17 his logo file so I could use them. He sent me copies
18 of the Decus. Decus, Inc. was the company that was
19 doing it. He sent me copies of the Decus links, I
20 believe, on October 27th, I believe. On
21 October 27th, I wrote a list to John.

22 Q. When you say "wrote," you mean via E-mail?

23 A. Yes, via E-mail. This was like at 8:00 at
24 night. One was a copy of the logo files, F820. The
25 next morning I got an E-mail from John's assistant,

1 whom I never met, with a logo in the file right there
2 on an unrelated project.

3 Then the next day or two days later, two
4 business days, I think there was a weekend in between, I
5 sent John back the list with the "I need."

6 And I said, "I only need two things," and below
7 everything was crossed out in the E-mail below.
8 Everything was stricken, including the logo files for
9 use. It was like a "D" with an angle thing, black and
10 orange "D." He sent me that.

11 Q. Can you explain what was the difference
12 between that logo and the one that they eventually
13 allowed you to use?

14 A. He allowed me to use it for Decus, Inc.'s
15 business at the time. They subsequently gave me a
16 logo, which, I'm sure you'll see, looks entirely
17 different. It's just an entirely different branding.
18 They sent me this other logo, because they just
19 wanted to create a whole new face and create a brand.

20 Decus, Inc. didn't have a website that was
21 formed at that time. There wasn't really anything.
22 They say I created the BuildZoom site. That was
23 something that John asked me to do or suggested. I
24 never even heard of BuildZoom because he thought it got
25 traction. It is high on Google searches or something.

1 Q. Did they give you any Decus logo, be it the
2 old one or the new one? Did they give that logo
3 template to you?

4 A. Yes. On October 28th, in the morning, I got
5 the one for Decus, Inc. Then later --

6 THE COURT: What year, sir?

7 THE WITNESS: This was 2015.

8 THE COURT: Thank you.

9 THE WITNESS: Then a month or so later when
10 we decided we were going to form this Decus Construction
11 Company and rebrand everything, I received what they
12 talked about.

13 And I said, "Let's use it as a logo for Decus
14 Construction," which, as you'll see, is just an entirely
15 different appearance for the new company.

16 BY MS. LAVAN:

17 Q. So that's what I wanted to clarify.

18 Decus Construction is the new company that you
19 intended for all three of you to share in; is that
20 right?

21 A. That was the plan, and then it became my
22 belief. On November 24th, I sent them an E-mail
23 listing all the things that I was going to do in a
24 proposal of the structure. We met and we agreed that
25 that was pretty spot on. This was just a meeting.

1 We are meeting fairly frequently.

2 Thomas said he would send me a shareholders
3 agreement, a copy of one, just to form this
4 relationship. Essentially, "Let's get about our
5 business." I came to find out three days later that
6 Thomas created the entity. They didn't give me over
7 months, although they sent out a shareholders agreement,
8 a draft, but then slowly bounced it back and forth
9 around.

10 So it has never been actually official except
11 for what I believed it to be and what was told to me.
12 We formed the entity with all three names. We formed it
13 for the three of us as a new company, clean, and
14 subsequently they say no.

15 Q. And that belief has been documented in
16 numerous E-mails?

17 A. Yes. There's a text in those E-mails that I
18 sent to John on August 1st of 2016 when I found out,
19 and then it comes out that John didn't even know. So
20 there are two steps, as I understand it to be, to
21 creating a business.

22 The first is, you know, forming the entity.
23 These are really like the critical things, forming the
24 entity. He went online and created this Inc. online.
25 There you list who the shareholders are and how many

1 shares and everything there are. It requests it. I'm
2 sure it's somewhere in there. If the attorneys care to
3 get to it, we can. I was approached on this by
4 attorneys for my uncle who had been in business forever.
5 That's where I got my thoughts and history of how it
6 works.

7 Then you negotiate over a shareholders
8 agreement. Actually, how it works is if there are three
9 parties and we all have 33 percent of the shares, then
10 you can do that, but I might still get 50 percent of the
11 profits or do 100 percent of the work.

12 Just like my uncle, the shareholders operating
13 agreement defined the role and responsibility of what
14 everybody does and what they get. The terms can be a
15 little bit different. But also, you know, the actual
16 involvement can. For instance, contracting, my uncle
17 was a 51-percent owner, but he had no rights or
18 responsibilities. I was a sole managing member.

19 Q. Mr. Heenan, let's go back, because I don't
20 want the jury to get confused.

21 During that time, October, November, that
22 Thomas Aloia had formed an entity with you, Thomas and
23 John all as shareholders --

24 A. Yes.

25 Q. -- was that your belief?

1 A. Yes.

2 Q. Then, later, did you find out that that
3 didn't occur?

4 A. I did when I texted John. When it started to
5 smell really odd, and Thomas' actions did, I grew
6 concerned because, yes, I was signing documents with
7 Decus' name, the identifying name on it, and I find
8 out that I'm not an owner of it. So all of a sudden
9 I now by signing that document -- it's so fortuitous
10 this is how it gets us here.

11 I'm concerned, "Oh, God, I'm signing documents
12 that these guys can say are fraudulent." And so if
13 something goes wrong between an owner and them, they've
14 got me in the middle. They can point to this document
15 and try to enforce it, as they are now in some
16 instances, or they can try and deny its validity, as
17 they are in other instances in this case.

18 Q. Mr. Heenan, why don't you explain these
19 contracts. Forget about the contracts for a minute.

20 The clients. Were these your clients
21 originally?

22 A. All of the clients that I engaged with, with
23 Decus in any regard had known me for, I'll say, a
24 number of years before that. So the Gloucester Data
25 Center, I started working on a project on an adjacent

1 piece of property there back in 2010. It was a
2 development solar field.

3 Q. But what I'm trying to clarify, so we don't
4 waste too much time, those were your relationships
5 with those owners of those particular contracts
6 before you even knew you were going to engage or
7 discuss ownership with John and Thomas?

8 A. Yes, significantly before. I think in all
9 instances, and I can't say the specific owners.
10 Owners, representatives, the people in charge at
11 those places knew they were contractors.

12 Q. All the individuals involved were, for the
13 most part, you were contacts; is that right?

14 A. I can't really recall --

15 Q. Just listen to my question.

16 I'm not saying every last one, but for the most
17 part, those were your contacts?

18 A. Every client where a contract was executed
19 was a contact that I knew before any engagement with
20 John or Thomas, and none of them knew John or Thomas
21 before I engaged with John and Thomas.

22 Q. So over several months, from October to the
23 spring of 2016, what type of work were you doing on
24 those projects?

25 A. To the spring of 2016? I was doing

1 everything.

2 Q. What type of work were you doing on those
3 projects that are part of this action?

4 A. So Gloucester Data Center, and really the
5 genesis of it, the solar project adjacent to it. The
6 solar project, I started working on it in 2011. I
7 actually worked with the original developer to do
8 Land Use Approvals, testified at the Land Use
9 meetings in front of the Planning Boards.

10 I worked with the civil engineers for all those
11 years. The project subsequently got denied by a change
12 in the laws in New Jersey. It had to become a necessity
13 metered project, which means that you had to put a
14 building there to consume all the power.

15 The owner and I spent so much time on it,
16 years. He spent hundreds of thousands of dollars, and I
17 hadn't made a dollar on it yet. But we started trying
18 to figure out how we could, with this little footprint
19 that we have, consume this power? I'm Googling data
20 power centers.

21 Q. Let's go back.

22 A. What was I doing?

23 Q. You're talking about all this work that you
24 were doing.

25 A. I did everything.

1 Q. Were you the only one, for the most part --
2 and I'm not saying entirely, but was it you that was
3 working on the Gloucester Data Center and solar
4 project?

5 A. Yes, I was doing, I will say.

6 Q. Not that they are under other subcontractors.
7 I realize that, but you were the one out of you, John
8 and Thomas that was doing most of the work on that
9 particular project; is that right?

10 A. Yes, but on the Gloucester Data Center John
11 did an estimate after the designs had been -- we had
12 actually gone in front of the Planning Board, or we
13 were going. We finished everything, and we were
14 going to the Planning Board to provide testimony
15 about the building and how it was going to work and
16 everything, and John had to get an estimate.

17 Our building was 58,000 square feet about, and
18 John's was 92,000. We were at 58,000 on one story. You
19 can claim it worked for the project, but I don't think
20 it's applicable to the project.

21 Q. So it's safe to say that John did an estimate
22 for the project, correct?

23 A. An estimate for a project.

24 Q. It wasn't an accurate estimate?

25 A. If the building size is off by 50 percent, I

1 would say that's pretty inaccurate.

2 THE COURT: Ladies and gentlemen, we will
3 take our lunch break now, 12:15. Madam Deputy will
4 direct you to your next steps. We will begin promptly
5 at 1:00 with Mr. Heenan remaining on the stand.

6 Thank you very much.

7 (The jury exited the courtroom
8 at 12:15 p.m.)

9 THE COURT: Mr. Heenan, you are under oath.
10 The transcript continues to the next page as though
11 there's no break. You cannot speak to your lawyer about
12 your testimony. You can't coach, prep or anything else
13 during this lunch break. You may talk about the
14 weather, you may talk to somebody else, but you can't
15 talk at all about documents or questions or anything
16 else.

17 If you are on the stand, even if you're on
18 redirect, you can't talk to the lawyer about anything
19 because the transcript goes through as though you never
20 left the stand.

21 Do you follow my directions?

22 THE WITNESS: Yes.

23 THE COURT: We'll be ready to go at 1:00.
24 Thank you.

25 (Luncheon recess was held at 12:20 p.m.)

Gregg B. Wolfe, RPR, CM
215-460-1511

1 (The Court resumed the proceedings
2 at 1:00 p.m.)

3 THE COURT: Did you follow my direction
4 over the lunch hour about not speaking to your counsel
5 about the case?

6 THE WITNESS: I did.

7 THE COURT: Thank you.

8 (The jury entered the courtroom at 1:00 p.m.)

9 THE COURT: Good afternoon, lady and
10 gentlemen. You recall we are in the direct examination
11 of Mr. Heenan by his attorney.

12 Ms. LaVan, you may continue.

13 MS. LAVAN: Thank you, Your Honor.

14 BY MS. LAVAN:

15 Q. Can we get back to where we started? You had
16 testified earlier that Decus via John Sciotto did an
17 estimate for one of the projects, but you had
18 testified that the estimate was inaccurate; is that
19 your correct testimony?

20 A. I can't say that the estimate was inaccurate,
21 except that it was accurate for some buildings not
22 the one that we were building.

23 Q. It did not apply to this job?

24 A. Correct.

25 Q. Is that exhibited in your Exhibit 12?

1 A. No. This appears to be my -- yes. Wait.

2 Okay. So this first page is a different
3 estimate. I don't know if this is intended to appear to
4 be all one document, but this first page is an estimate
5 that I had done --

6 MR. WATSON: What Exhibit is this?

7 THE WITNESS: I'm sorry, Exhibit 12. It's
8 Bates labeled H000001. At the top it says, "0376."
9 That page is for the solar project adjacent to the data
10 center, which I had been working on for years.

11 BY MS. LAVAN:

12 Q. So the solar project was a project that you
13 were working on; is that your testimony?

14 A. Yes, prior to meeting with Decus.

15 Q. Same thing with the Gloucester Data project?

16 A. Yes. The solar project went through a number
17 of different hands, I believe, companies under my
18 sole management, maybe different entities, maybe not.
19 Some might be joint ventures. Had three different
20 contracts for the solar project by that time because
21 it kept changing hands or changing potential
22 investors or interested parties. They wanted me
23 involved, because I was the only one who had the
24 whole history.

25 Q. Did you work on that project prior to Decus'

1 involvement with Bill Hessert at the time?

2 A. Yes, about five years prior. Do you want me
3 to finish with this estimate?

4 Q. Finish with the estimate.

5 With the estimate, is that the estimate that
6 shows the estimate performed by Decus was not correct or
7 not complete?

8 A. There are a couple relevant things.
9 Page 0377 at the top, Decus' estimate, I believe this
10 was produced, it says, 9-15-16.

11 So this is just by recollection. Right around
12 the time of the Planning and Zoning Board meeting, one
13 of the things I had to testify to was the size, project
14 value, number of construction jobs because I was going
15 to give testimony as a representative for the project
16 owner, the applicant, or an expert witness. So I had
17 asked John for an estimate on the data center, and it
18 was also one of the obligations of Decus under the data
19 center subcontract.

20 So, as you can see, the first line says, "Solar
21 field completed by others."

22 I believe Decus is now claiming money for it.

23 Q. Just refer to the line, because you're the
24 only one with the exhibits in front of you.

25 A. Yes, Page 0377. The first line of this

1 schematic estimate says, "Solar field completed by
2 others."

3 And then if you go to the bottom "Assumptions,"
4 it says, "8-megawatt continuous power supply," which
5 I've seen referenced a few times going through these
6 documents.

7 It was meant at the time to be intended to be
8 representative of the solar, or it was thought by John
9 that the solar project being at 8 megawatts, if you
10 referenced the page prior, 8.17 megawatts, which I was
11 representing or thought that the solar project would
12 produce continuous power supply of 8 megawatts.

13 But when the sun goes down, solar doesn't
14 produce anything. This was actually brought up to me
15 sometime later in October, November of 2016 by the owner
16 after meeting with John and Thomas. They thought it was
17 comical.

18 Q. So is it your testimony that this is wrong?

19 A. It is wrong. If you look at the last line
20 under "Assumptions," it says, "38,000 square-foot new
21 two-story addition."

22 It wasn't a two-story building. I did all the
23 designs myself, all the schematics. It was never a
24 two-story building at all.

25 Q. Regardless of this being a wrong estimate

1 prepared by John Sciotto, did you still pay them for
2 what you deemed to be their time on this project?

3 A. Again, despite what has been represented, I
4 was very transparent with the owners on the projects,
5 in fact, extremely transparent. This Alex Lemus, who
6 you may have heard referenced, he knew that I had
7 left -- he had contracts with me for years about the
8 --

9 MR. WATSON: Objection. The question --

10 THE COURT: Sir, what is the objection
11 based on? Hearsay?

12 MR. WATSON: Nonresponsive.

13 THE COURT: Stick to the question. Don't
14 tell us what Mr. Lemus said. Okay? Understood? Stick
15 to the question that was asked. Your counsel can come
16 back and ask you a follow-up.

17 BY MS. LAVAN:

18 Q. Regardless of the work and the incomplete and
19 inaccurate work that John Sciotto performed, did you
20 still pay them certain moneys for their time that
21 they may have put in it even though it was wrong?

22 A. Can I clarify by saying I gave them \$21,000,
23 approximately?

24 Q. Explain that, please, briefly.

25 A. Again, there were two projects. My

1 engagement with the owner referenced the solar and
2 the data center, two separate properties, two
3 separate addresses and two separate applications, et
4 cetera, et cetera, two separate approval processes,
5 entirely.

6 The owner had me working on both. In fact, at
7 that Planning Board meeting, I was testifying as it
8 related to both. So doing that work over this almost
9 eight or nine-month period, the owner made certain
10 payments from different entities. Some came from
11 entities that had interest in the data center, and
12 others came from entities that had interest in the solar
13 project.

14 The payments that came from the separate
15 entities of them actually ultimately added up to just
16 under the \$21,448 that I paid Decus, or gave Decus. I
17 say "gave" it to them, because they hadn't earned the
18 money in any regard, in my opinion.

19 Q. Is that because they didn't perform any work
20 on the project and the work they did perform was
21 incomplete and inaccurate?

22 A. Yes, they hadn't done anything. In fact, I
23 believe their depositions they said we didn't know
24 what was going on with the project. And so my
25 opinion as it relates to "gave it to them" was --

1 Q. Who told you that they didn't know what was
2 going on with the project?

3 A. I think in both Sciotto and Aloia's
4 depositions they said I wasn't giving them
5 information about what was happening.

6 Q. During this particular time frame, as you're
7 working on the Gloucester Solar project, were you
8 still working on site at the Brewerytown job?

9 A. At the beginning, there were times that I was
10 on site at the Brewerytown job. Then towards the
11 middle they had me really just doing schedules, I'll
12 say, until like the end of April. I was helping them
13 with schedules as the consulting agreement was for
14 Decus, Inc.

15 Q. That was a verbal agreement?

16 A. It was a verbal agreement that I would be
17 paid this \$750 a week for part of my time.

18 Q. Did they pay you for your consulting
19 services?

20 A. No, they did. They paid about, I believe,
21 14,000 of a total of 32-or-so-thousand dollars that
22 were billed. As I'm sure the records demonstrate,
23 there's communications back and forth referencing the
24 Brewerytown project until the end of April.

25 We agreed then, because I wasn't getting paid

1 by them for it, that I wasn't doing that anymore. I'm
2 just working on the Decus Construction stuff, which, I
3 believe, again, at the time was our project. So we
4 terminated it.

5 Q. You were trying -- strike that.

6 How much approximately do you believe you're
7 owed under that consulting agreement?

8 A. I believe the number is about -- actually,
9 no. I think they came up. It was either \$17,000 at
10 that time that we said I'm done, which 17,000 divided
11 by 750 a week, I don't think they paid me anything
12 for any work by the end of April. I hadn't been paid
13 for a minute of my time in 2016.

14 Q. To the best of your knowledge, was it
15 approximately \$9,000?

16 A. Yes, I think they paid the 8 down.

17 Q. Can you look at Exhibit 29, please, and let
18 me know if those are the consulting invoices that you
19 had sent to Decus?

20 A. This first one is actually for a different
21 project, one project that I went and striped a
22 parking lot, put striping in for parking spaces
23 again. Again, did it myself because they were in a
24 pinch.

25 Q. Let me make this more accurate.

1 Can you pinpoint, to the best of your
2 knowledge, as you sit here today, which invoices you
3 were not paid for?

4 A. Yes. Bear with me. The last page really
5 clears it up. It's 0590 on the top right corner.

6 Q. What's the bottom right-hand number?

7 A. That is DECUS01431. That's where I got the
8 17,000-about number. It says, "Total, \$17,005.04."

9 Q. So is it your testimony that out of that
10 17,000 --

11 MR. WATSON: Objection, Your Honor,
12 leading.

13 THE COURT: Sustained.

14 BY MS. LAVAN:

15 Q. How much out of the 17,000 were you not paid
16 for your consulting services?

17 A. I was not paid \$9,005.04, I believe. If they
18 paid 8, judging by the weeks that it says, then, in
19 the units and descriptions, judging by weeks, I think
20 they paid me about through the end of January. So I
21 was wrong when I said that I believed that it was
22 nothing in 2016. At the time, they hadn't paid
23 anything, but ultimately they didn't pay anything
24 into 2016.

25 Q. Regardless of them not paying you, you still

1 worked with Thomas and John on company business?

2 A. Well, you have to bifurcate the companies.

3 Decus, Inc., again, that's who I am invoicing here.

4 Decus, Inc., itself, I stopped. There are E-mails in
5 these documents that say, you know --

6 Q. So you stopped working for Decus, Inc. in the
7 Brewerytown job; is that right?

8 A. Yes.

9 Q. But did you continue to work on Decus
10 Construction business?

11 A. To an extent, yes. It was at that point,
12 sometime in March, like late February, early March,
13 that John and I sat down and met with him. They were
14 in arrears in payments back then, what I deemed to be
15 a nominal amount.

16 So I said, "Look, I'm not doing this forever,
17 you know. Our agreement isn't that I work, and you
18 don't pay forever." Like eight months. It seems that
19 they were going to expect that I just keep working
20 without getting paid. It was early February when I
21 said, "Look, you know, I'll keep helping you with
22 Brewerytown for a little bit, but Decus Construction" --
23 and as Mr. Watson pointed out earlier, my engagement
24 with Decus, Inc. was supposed to be a probationary
25 contract, he said, which was to go through all three in

1 a short time.

2 So this short period of time they drug out
3 until the end of April. Then it was early February when
4 I decided that I gave John at our meeting -- I said,
5 "Look, I'm not going to be doing this forever without
6 getting paid. I'll give you a little bit more time on
7 Brewerytown, and then I'm only working on the Inc. stuff
8 or the construction stuff. Since we don't have a
9 shareholders agreement in place, I'm going to form a dba
10 in Jersey, and I'll get the contract so I can protect
11 myself and my clients, and I'll subcontract everything
12 to you."

13 Q. So the idea, though, during this time frame
14 that you're referring to, while you're still working
15 on Brewerytown, you're working on Decus Construction,
16 you were still working as though you were a
17 partner --

18 MR. WATSON: Objection.

19 THE COURT: I have to hear the question.

20 BY MS. LAVAN:

21 Q. Were you still working as though you were a
22 partner in the Decus Construction business at that
23 time?

24 MR. WATSON: Objection.

25 THE WITNESS: I was.

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215-460-1511

1 THE COURT: Overruled. Just ask him what
2 happened. Remember the jury is disregarding your
3 question, so you're not helping us by getting
4 single-word answers.

5 THE WITNESS: I was.

6 MS. LAVAN: Let me re-ask it.

7 BY MS. LAVAN:

8 Q. Did you have several correspondence going
9 back and forth via E-mail between you, Thomas and
10 John where you have the shareholders agreement draft
11 going back and forth?

12 A. So, the shareholders agreement draft, I was
13 told again in late November that Thomas had formed
14 the entity, and their communication --

15 MR. WATSON: Objection, nonresponsive. The
16 question was --

17 THE COURT: Were there drafts going back
18 and forth?

19 Sir, here's what you want to do. You want to
20 answer the question "yes" or "no." Then you want to
21 explain. You're not responding. You're trying to tell
22 your story. Just respond.

23 If she asked the question, "Did you," she's not
24 asking you to explain. She said, "Did you."

25 So did you have drafts going back and forth? I

1 just asked you. Now you tell me, did you have drafts
2 going back and forth?

3 THE WITNESS: Can you please clarify the
4 time that you're referring to?

5 BY MS. LAVAN:

6 Q. Let's look at an exhibit, Exhibit 27.

7 There is an E-mail from you to John Sciotto and
8 Thomas Aloia. It's dated Tuesday, November 24th, 2015.

9 A. This appears to be the E-mail that I was
10 referencing earlier, yes.

11 Q. Why don't you explain what this E-mail says
12 and what the intent of it was?

13 A. This is when we met and affirmed that we were
14 going to move forward with creating this new entity
15 collectively.

16 Q. Does it say somewhere Johnstown --

17 THE COURT: You can't do that. You were
18 about to give him his answer.

19 Continue with your answer.

20 THE WITNESS: So, again, November 24th, I
21 was told that we agreed that we were going to create
22 this new entity. It is three days later that it was
23 created. That's when I started working on its behalf.

24 THE COURT: Thank you.

25 Next question.

1 MS. LAVAN: Thank you.

2 BY MS. LAVAN:

3 Q. You referenced to them that you'd make a
4 great team.

5 Did you reference that in this E-mail?

6 A. Can I correct something first? I said, I
7 just started working on its behalf, on Decus
8 Construction's behalf. I really just started a bit
9 prior with putting together marketing to see how we
10 can put everything together in a draft form.

11 Q. You're saying that prior to this E-mail you
12 had already received the logo information? Did you
13 receive the logo information?

14 A. November 13th, I had received that.

15 Q. In this E-mail, among other things, it states
16 that, "I like to perfect the following goals by the
17 years end." And you say, "Number one, Company
18 profile generally complete. Website linked, et
19 cetera, and uniform."

20 Is that what it says?

21 THE COURT: Ma'am, you can't really do an
22 examination that way. You have to ask him --

23 MS. LAVAN: I have to ask you what it says.

24 THE COURT: Summarize. Show it to the
25 jury.

1 If not, you'll see it later on, ladies and
2 gentlemen.

3 Let's not read what we all can read. Tell us
4 generally.

5 THE WITNESS: You know, at this time,
6 again, it was right around then that we were saying,
7 yes, I believe I was finishing with the mess that was
8 the whole thing with my prior partner and my uncle.
9 Actually, at that point I had been helping him with the
10 Brewerytown thing, but I wasn't getting what I really
11 needed to be effective.

12 So I figured I'm going to begin taking half of
13 my time up. Why don't I start committing more of my
14 time to this new entity, this new company. Timing is
15 appropriate for my contacts to be hearing from me. My
16 clients were calling me because, again, it's three, four
17 months that I really hadn't been in the business with my
18 prior business. "Where have you been, Mark," that sort
19 of thing. So it was time for me to get out and present
20 a new, "This is where I am." Still make new colors in
21 name. That's what we were doing here.

22 MS. LAVAN: Your Honor, may we approach
23 briefly? We have a question just regarding the
24 exhibits, so it doesn't need to be an approach. How
25 would you like me to show them to the jury?

1 THE COURT: A screen.

2 MS. LAVAN: I don't have a screen here.
3 Can I show it to him? How is the best way to publish
4 it?

5 THE COURT: You need a screen. I can't
6 tell you that.

7 MS. LAVAN: I have a projector, but it's
8 not hooked up so I'm just going to publish it, and then
9 we'll admit it after, correct?

10 THE COURT: I can't counsel you.

11 MS. LAVAN: No problem.

12 I'd like to then show the jury Exhibit 27.

13 THE COURT: You can't hand it to them.

14 MS. LAVAN: Okay. We'll take a break when
15 we do it, and I'll bring my projector up.

16 THE COURT: That's the way to publish it,
17 sure. I'm not trying to keep stuff away from you. I'm
18 talking to the jury. I have to make sure what it is
19 before I start circulating it around.

20 BY MS. LAVAN:

21 Q. This E-mail is kind of an outline of your
22 expectation of the partnership, at least in a
23 nutshell?

24 A. That's correct. Profit sharing of 30 percent
25 with two-thirds of the members. And so, again, my

1 reference was the profit-sharing portion, ownership
2 not actual shares, two-thirds of the members votes
3 and anything requiring a vote. Partners would be
4 guaranteed salaries, \$100,000 a year plus benefits,
5 to the extent that we were making money.

6 We're going to establish a rate schedule, for
7 different things that each of us with our different
8 businesses and entities and the other stuff agreed upon
9 costs, that our collective company would pay any other
10 partner's company for things.

11 Q. Did this arrangement change at numerous times
12 while you were working with Thomas and John?

13 A. I'd have to point to the shareholders
14 agreement.

15 THE COURT: Sir, let's do it this way. If
16 she asked it, then answer.

17 THE WITNESS: Yes, yes.

18 BY MS. LAVAN:

19 Q. As you recall today, who changed the terms of
20 the agreement?

21 A. Thomas or John, I can't recall. It was at
22 the end of February. I received from, I believe,
23 Thomas, a draft shareholders agreement. It was like,
24 I forget, not indicative of the kind of operating
25 agreements I've always used, which is many, many

1 pages. But it was totally blank. It had no names in
2 it, but it referenced the formation of a new
3 relationship between the entities.

4 To me, it was clearly evident at least and
5 reassuring to me because I had some of my concerns at
6 that time, but it was evident that they represented that
7 they didn't have a shareholders agreement, and that
8 nobody had any shares issued to them yet, because
9 otherwise you would have a purchase sale. I would be
10 buying the shares from one or both of them. But this
11 document just showed that it was brand-new.

12 Q. Right. But during that time when you were
13 working with Decus Construction, you were working on
14 the website.

15 Were you working on the website at that time?

16 A. Thomas had a friend who had done another
17 website for him, I guess, who had developed a prior
18 website, and I worked with him so Thomas set me up
19 with him to get everything up.

20 Q. Was this a friend of Thomas'?

21 A. I don't know that. They knew each other, I
22 could tell, or I got the impression.

23 Q. So is it your belief that Thomas and/or John
24 were aware that you were working on the Decus
25 Construction websites?

1 MR. WATSON: Objection.

2 THE COURT: Sustained. Overruled in the
3 sense that you may answer what your understanding of
4 what somebody told you. You can't guess what was in
5 their mind. If they told you, you can say that.

6 THE WITNESS: Document Exhibit 27, General
7 Profile --

8 THE COURT: No, that's not the question.
9 You can go back to that answer.

10 The question is, did you have an understanding
11 what they thought about the website, what they were
12 doing, what they were relying on, their impressions?

13 THE WITNESS: They believed --

14 THE COURT: Did they tell you something?

15 THE WITNESS: Yes, they would communicate
16 with me, "Mark, we need the website up."

17 THE COURT: Okay. So they would tell you
18 that or write you?

19 THE WITNESS: Yes, there are E-mails. They
20 knew I was doing it in no uncertain terms.

21 THE COURT: Because you had communications
22 about that. Not reading their minds. You actually saw
23 that?

24 THE WITNESS: Yes.

25

1 BY MS. LAVAN:

2 Q. Were part of those communications referenced
3 in Exhibit 37?

4 A. Yes, this is January. I had met with Dan
5 Geiger, who was the guy Thomas knew. He sent an
6 E-mail with different -- I gave him the model of what
7 a construction company website, in my opinion, should
8 look like. He gave me some templates, and we started
9 working off of them for him to build the architecture
10 and the design of the website so I could fill it in
11 with appropriate and accurate content.

12 Q. Was Thomas Aloia on this particular E-mail?

13 A. Yes.

14 Q. That's Exhibit 37.

15 A. Yes, he was copied.

16 Q. So according to this E-mail, he had knowledge
17 that you were working with Dan on the Decus, Inc. and
18 Decus Construction website.

19 Did he have that knowledge?

20 MR. WATSON: Objection.

21 THE COURT: Overruled only to the extent
22 that you can tell us if he told you that, not what was
23 in his mind.

24 Did he tell you that?

25 THE WITNESS: He did tell me that.

1 THE COURT: You're under oath.

2 Did they tell you that, or did they write it to
3 you?

4 THE WITNESS: Did they explicitly tell me?
5 No.

6 THE COURT: Objection sustained. You have
7 to know whether they wrote it to you or told you. We
8 can't look in their heads.

9 THE WITNESS: Yes, they absolutely knew.

10 THE COURT: No, you can't answer the
11 question. The objection is sustained. Unless you can
12 tell me a document or sometime they spoke to you, you
13 can't tell me that.

14 THE WITNESS: I can. I can point you to
15 Exhibit 63.

16 THE COURT: You can't run the direct
17 examination.

18 BY MS. LAVAN:

19 Q. Mark, go to Exhibit 63.

20 What's the date of this exhibit?

21 A. This is July of 16.

22 Q. Why is this document relevant to you?

23 A. For a number of reasons. Again, I was just
24 dealing with the website. In this document you can
25 see where I'm actually creating this content. Their

1 website, it was my idea. Most of the projects and
2 pictures, the photographs of buildings on the website
3 are still primarily buildings, or as of a couple days
4 ago when I last looked, primarily buildings that I or
5 my companies built before any engagement with Decus
6 Construction whatsoever. They have reference to
7 projects, our projects, that, again, I developed with
8 this in draft form.

9 Q. Were you using the Decus logo on the bottom
10 of your signature page as well?

11 A. The Decus Construction logo?

12 Q. The Decus Construction logo.

13 A. Absolutely. Communications, both from my
14 private account and from the Decus account, a
15 significant number of communications of which they
16 were copied.

17 Q. Was Mr. Aloia part of those communications
18 and E-mails from time to time where you were using
19 the Decus Construction logo?

20 A. Absolutely. Again, I was trying to --

21 Q. Just answer "yes" or "no."

22 Was Mr. Sciotto on those communications as
23 well?

24 A. Yes.

25 Q. So at the bottom, the logo is at the bottom

1 of the E-mail.

2 They are included on the E-mail, and therefore
3 you're corresponding with them about business, and
4 you're also using the Decus Construction logo; is that
5 right?

6 A. Yes, I used it. Again, at this time we're
7 still in either, if you will, because we got the
8 entity. And so I thought I was a shareholder so we
9 got the entity. I think I can represent this new
10 company. I'm told. In those E-mails that you
11 referenced, they are copied on communications where I
12 call myself a principal of the company.

13 Q. Let's get to that.

14 So you refer to a text message between you and
15 Thomas Aloia. Let's go to Exhibit 26. Exhibit 26,
16 Page 2.

17 In that text message, can you explain the
18 second one down, what it says? Can you say what it
19 says?

20 A. It's November 13th of '15, before we had an
21 agreement. It says, "Can you send me some
22 qualification materials, logos, et cetera, to use in
23 pulling together these proposals?"

24 Q. What proposal was he referring to?

25 A. That was actually me saying that.

1 Q. I'm sorry, you.

2 A. We talked about the logo. We agreed our new
3 company is going to have this logo. He had the
4 files. I didn't have the files.

5 Q. What was his response to that?

6 A. "Yes, when I'm in front of my computer."

7 Q. On the next page, Page 3, the very top, what
8 does that say?

9 A. This is November 16th.

10 Q. What does that first text say?

11 A. I said, "Have you gotten PDFs of the logo
12 files? Should I be using them on these proposal
13 drafts to avoid confusion?"

14 I meant avoid confusion between the old Decus
15 and what we had agreed to set up as the new co.

16 Q. What did Thomas Aloia say to you in this
17 text?

18 A. "I'll check when I leave the site, responding
19 to a prior question, but, yes, I think that's a good
20 idea."

21 Q. Did you believe this to mean that you were
22 able to use the Decus Construction logo?

23 A. I think anyone would.

24 Q. Were there other correspondences going back
25 and forth with them allowing you to use the Decus

1 logo or Thomas Aloia giving you the PDF with the logo
2 attached?

3 A. He sent me the PDF with all of the envelope,
4 an envelope draft, letterhead, the logo file itself
5 and a business card layout, so that I could get the
6 business cards done for all three of us.

7 Actually, as I mentioned earlier, there was a
8 communication. I forget whether it was via a text or
9 E-mail. I said, "I got ahold of Thomas." And I said,
10 "I'm listing John and I as principals. I'm getting the
11 business cards."

12 Q. We will get there. I don't want to confuse
13 it. If you go to Page 8 of those same text messages.

14 MR. WATSON: What page in the upper right?
15 0546, it is.

16 BY MS. LAVAN:

17 Q. So that's Page 8 at the bottom. If you read
18 the very bottom, what does the bottom say? This a
19 text message from you?

20 A. I say -- this is January 27th, so before they
21 sent me any shareholders agreement either. They are
22 running the lot on our cards today and asked me about
23 titles. I was going to have them list at least John
24 and I as principal. Thoughts on that and yours?

25 Q. And what was Thomas' response to that?

1 A. "Make it easy. No titles for now."

2 Q. Did he ever say to you, "No, don't list
3 yourself as a principal at Decus Construction"?

4 A. No. I did that in part as a test.

5 Q. But he never said don't do it; is that right?
6 Is that your testimony?

7 A. No.

8 Q. Then on Page 9 there's an E-mail or a text
9 from Thomas Aloia at 8:49 a.m.

10 What does that say?

11 A. I'm sorry, which page?

12 Q. Same page, Page 9.

13 A. 8:49. He said, "Any new contracts? Do you
14 have any partnership docs you could send over? What
15 John sent me is way too intense, about 50 pages, and
16 too many blanks to fill in, which suggested to me
17 they don't have a partnership document. All we have
18 are shares."

19 Q. So up until this point you had never seen a
20 partnership document between Thomas and John.

21 Did you ever see one between Thomas and John up
22 to this point?

23 A. I still don't know that I ever have.

24 Q. Okay. So the first time you're acknowledging
25 that there's a partnership going on, it's new and is

1 it between the three of you?

2 A. I don't want to represent this is the first
3 time that --

4 Q. I'm not representing this is the first time.
5 This is among many times, correct?

6 A. Yes, to correct, I believe I may have said it
7 was January 26th. It was the 28th, it appears.

8 But, yes, you know, this is when they sent me
9 that blank document with nobody's names and no shares
10 filled in anywhere. Not a purchase agreement.

11 Q. During this time frame in January, February,
12 was it still your understanding that you were working
13 towards building a partnership and building a
14 relationship at this time?

15 A. Again, I thought we had a partnership.

16 Q. I'm talking about the difference between you
17 understood it to be a partnership.

18 Did you understand it that way?

19 A. Yes, yes.

20 Q. But there was no written agreement at that
21 time; is that right?

22 A. There's no written agreement as to how the
23 entity that I believed I owned 33 percent of was to
24 be operated, which is critical, but my impression at
25 the time was, "Hey, if anything goes wrong and they

1 excuse me, at least I got the law to support me."

2 Q. You started to feel as though that was going
3 to happen.

4 Can you briefly explain why you felt that way?

5 A. There were a number of odd things. We had
6 agreed to do things in different ways. I kept asking
7 at our meetings. We'd meet every Monday. I'd keep
8 asking him for a document. They sent this, and then
9 I sent back revisions.

10 There were months later, and I'm still pushing
11 for it and Thomas referred in an E-mail, he said, "You
12 got the document. The ball is in your court."

13 I said, "What do you mean? I sent you back the
14 last draft months ago."

15 I thought we were working on that until
16 something else comes to pass.

17 Q. At about that time, give or take, did you
18 start to get concerned about where the partnership
19 was going?

20 A. Well, I had my initial concerns in part
21 because of their history, which is why we wanted to
22 be very clear so there's no confusion between the
23 two, because I didn't want to be confused --

24 Q. What history are you referring to? What were
25 your concerns about their history?

1 A. Well, first, when I saw this Brewerytown job,
2 it was supposed to be done as a big project. It was
3 supposed to be done in January, and this was October.
4 There was no way that was happening. Then I come to
5 find out that like a number of their recent projects
6 were either in a claims status or in some sort of
7 litigation or getting close.

8 Having had my business for as long as I did,
9 for five years was running a company, I only had one
10 project that we were in a legal fight with an owner.

11 There were two, but the one was really small
12 and really irrelevant. But I heard about -- how is it
13 that you're batting 500 for successful project
14 performance? Also others told me, and then Thomas told
15 me that he had gone through a personal bankruptcy that
16 then Thomas referred to it as pushed his company into
17 bankruptcy.

18 Q. At this time, was Thomas Aloia working on any
19 jobs or projects with Decus Construction?

20 A. Not to my knowledge.

21 Q. What about John Sciotto, what was he doing
22 while you were working on Decus Construction?

23 A. He was primarily at the Brewerytown project,
24 which I believe that was always represented at the
25 Brewerytown project, trying to finish it all the way

1 into the summer almost six months after it was
2 supposed to be complete.

3 Q. Did Thomas or John bring any projects to
4 Decus Construction?

5 A. Thomas asked me at one point for a proposal
6 for Decus Construction to send to Equus Capital
7 Partners or something, because I put together a whole
8 proposal DEC. Much like the website, it's 90 percent
9 my content, my history. But me and my companies,
10 I'll say, just so they don't try to spin that against
11 me. But it was me and my companies.

12 I sent it to Thomas, and I believe those
13 documents listed all three of us as partners or
14 shareholders, or it might have been key executives. But
15 whatever it was, you know, the ownership or something
16 like that.

17 Q. Did that project ever come to fruition?

18 A. No. I don't know that they ever called
19 Thomas back. He referenced an opinion of the Capital
20 Partners, which tells me that he did send out the
21 content that I had developed, representing my
22 history. So he did claim all of my history, but he
23 said they didn't like the proposal or something.
24 Maybe John estimated the wrong size building.

25 Q. Other than the three jobs that you brought to

1 Decus Construction, did Thomas or John bring any
2 projects that actually occurred?

3 A. What do you mean by "brought"?

4 Q. Meaning they actually made money.

5 A. What do you mean by "made money"?

6 Q. They were performed.

7 Did they perform any jobs, bring any jobs, do
8 any work? Explain who did the work, which you did
9 earlier so you don't need to go into that.

10 Did they bring any projects to the table that
11 were profitable to Decus Construction?

12 A. As of their depositions a few months ago,
13 July of this year, Decus Construction, according to
14 them, had done no projects except the ones that I had
15 brought, or that they felt were theirs because of me.

16 Q. And you felt they were yours because you
17 brought them?

18 A. I was bringing opportunities to a negotiating
19 table and nothing more.

20 Q. Had they kept -- strike that.

21 Did they keep their word when they said that
22 you were going to partner together?

23 A. Again, as we get to the testimony of the
24 owners of those projects, they largely knew me. I
25 was out there at the CML, and Thomas had another

1 company, a subcontractor. They weren't going to show
2 up the day I told the owner we were going to show up.
3 So the owner who saw me dressed like this most of the
4 time comes to walk in and sees me with a shovel
5 digging a trench because I was not not going to show
6 up with integrity.

7 Q. Did they represent to you that you were going
8 to be a partner of the Decus Construction Inc.?

9 A. Not that I was going to be, that I was.

10 Q. Did you bring projects to Decus Construction
11 originally?

12 A. So the Gloucester Center Data project, I
13 brought a contract as it related to that. I drafted
14 one and sent it to the owner. I had told him kind of
15 what was going on, and he also hadn't even formed the
16 entity that was the other party to the contract. So
17 he responded with an E-mail that said, you know,
18 there's some addressing the conversation --

19 MR. WATSON: Objection, Your Honor,
20 hearsay.

21 THE COURT: Yes, not in that context.

22 BY MS. LAVAN:

23 Q. Then, Mark, when you realized that the
24 partnership wasn't going to legally come into
25 fruition, it wasn't going to be written, did you

1 decide to continue working with your clients?

2 A. I really finally decided for certain that it
3 was going to be over 100 percent between August 24th
4 and the 26th of August. The CML Project was only
5 about halfway done at that point. The CML Project
6 was done on site all the way into October under that
7 contract.

8 The data center project, you know, it's really
9 a shame, but because of the crazy representations and
10 everything I was advised by counsel not really to engage
11 with the owner as it related to the data center, which
12 was at a critical point, and was needed for the solar
13 project, as I testified to earlier, to happen then.

14 Q. Did the owners -- strike that.

15 The owners of the projects, did they want to do
16 business with you?

17 A. According to them.

18 Q. Did they want to do business with Thomas?

19 MR. WATSON: Objection, hearsay.

20 THE COURT: Calls for speculation and
21 hearsay. Sustained.

22 BY MS. LAVAN:

23 Q. Is there documentation that states that one
24 of the owners didn't want to work with Thomas?

25 MR. WATSON: Objection, same objection.

1 THE COURT: No, that's a "yes" or "no." To
2 be admissible you have to get to the next question.
3 That's a "yes" or "no."

4 Overruled.

5 THE WITNESS: I believe so.

6 BY MS. LAVAN:

7 Q. Bear with me. We're going to come back to
8 that, because I have to go through the Exhibit book
9 to find it.

10 Back to our communications with Thomas Aloia,
11 on Page 23 of those text messages.

12 THE COURT: Is that 26?

13 THE WITNESS: Yes, 26.

14 THE COURT: Page what, I'm sorry?

15 MS. LAVAN: Page 23.

16 THE COURT: Page 23 of Exhibit 26. Thank
17 you.

18 THE WITNESS: Yes, I'm there.

19 BY MS. LAVAN:

20 Q. Down towards the middle bottom, Friday,
21 June 10th.

22 A. Yes.

23 Q. What do you ask Thomas via a text there?

24 A. Actually, I said, "Any issue with me filing a
25 Public Works registration for Decus in New Jersey

1 allowing us to bid prime or sub on any Public work?"

2 Q. And what did he say to you in response?

3 A. He said, "No problem," which to me --

4 Q. Was Thomas aware that you were going to
5 perform Decus Construction work in New Jersey?

6 A. So, you know, that was the intent of my
7 E-mail. I was referring to Decus Construction.
8 Decus Construction was not registered to do business
9 in the State of New Jersey. It couldn't even operate
10 in the state by virtue of not being registered with
11 the state for tax purposes. So, in fact, today, I
12 don't know that it is.

13 And so, yeah, I was going to file the Public
14 Works cert so we could bid on Public work, but then also
15 needed some other documentation from them that I never
16 got.

17 Q. Also, too, on Page 29, there's a text message
18 from Thomas at 8:37 p.m.

19 A. Okay.

20 Q. What does that say?

21 A. It says, "Let's get our agreement finalized
22 and start making it happen."

23 This was right after I found out that they had
24 been falsely leading me to believe that I was listed as
25 a shareholder on the formation documents.

1 Q. What day was that?

2 A. That was August 1st or 2nd that I found it.

3 Q. Did you confront Thomas about that?

4 A. I flipped to John. I think Thomas might have
5 been out of the country. So my communication was
6 with John. I was out at the CML Project performing
7 work and didn't have an execute agreement, but I
8 found out on site with people like with huge
9 insurance obligations. I find out I'm not a
10 shareholder in a company, that Decus didn't even have
11 insurance. I lost it. Look at my liability at that
12 point.

13 Q. Shortly thereafter, did the partnership start
14 to fall apart significantly?

15 A. It was already falling apart at that point.
16 I'll say Thomas, in my opinion, was very coy as
17 demonstrated by some of the things that were asked
18 for. I referenced myself as a principal, and he
19 says, "No titles. You're not a principal. You can't
20 say that. If somebody called me their husband and I
21 wasn't their husband, I wouldn't say nothing."

22 So he's very coy. Noticing that and the
23 shareholders agreement dragging out so long and seeing
24 some other things. At the time, eight months later, I'm
25 still the only one doing anything relating to

1 Construction, Inc., bringing the projects out there. I
2 think it was 101 degrees with the shovel. The owner
3 walked up and said, "What are you dressed like that for
4 and doing that for?"

5 I'm doing all this and when they are
6 representing, all I have to do is the business
7 development. John will do the estimating. I'll do the
8 operations. I got one estimate from John that was
9 50-percent larger than was actually designed to be.
10 Thomas, at the time that we were performing on site,
11 he's in Ireland.

12 Q. Were they, in your opinion, stringing you
13 along at this time?

14 A. The entire time. Hindsight, 20/20.

15 Q. At some point, did they demand money from
16 you?

17 A. They demanded money a lot. As I said, with
18 the data center, you know, I was doing work. I'm the
19 only one doing the work. For these months the
20 contract was effective, December 22nd, and I'm
21 billing the owner but the owner isn't paying. When
22 he paid, he made a payment for the solar portion and
23 some for the data center. In fact, some of the
24 payments reference the payer, Gloucester Solar Farm
25 LLC, which according to John's estimate, is by

1 others. Now they want to claim the money.

2 Q. Did you eventually pay them approximately
3 \$53,000?

4 A. I gave them \$53,000. "Pay" is far from the
5 truth.

6 Q. Pay? Gave? Provided?

7 A. Yes.

8 Q. Did you give them \$53,000?

9 A. Yes, in a cashier's check because they
10 demanded it immediately.

11 Q. Where was this when they demanded that you
12 pay them money?

13 A. August 26th, when we met and I told them,
14 "That's it, I'm done," which is after --

15 Q. I think the question is "Where."

16 A. They demanded the money at a coffee stop. I
17 think the address is 33 Henry Avenue, Philadelphia.

18 Q. Can you explain the circumstances and what
19 happened at that coffee shop?

20 A. Yes. This was all clearly unraveling, and I
21 didn't have a shareholders agreement. August 8th, I
22 signed and sent over an executed copy of what we had
23 as a shareholders agreement at that time because they
24 were telling me, "Let's get this done and start."
25 Four days later they get the shareholders agreement,

1 and they subsequently said --

2 Q. Did they ever sign the shareholders
3 agreement?

4 A. I don't know.

5 Q. You never received it.

6 Did you ever receive an executed copy of it?

7 A. No. This is three weeks later. So I walked
8 in, I said, "I'm done. I'm leaving, I'm taking my
9 projects. At the negotiation table I'm leaving these
10 that I was using as a negotiating chip, and I'm
11 taking them with me."

12 Q. What was the incident date at the Café?

13 A. That was August 26th, 2016.

14 Q. Did they threaten you?

15 MR. WATSON: Objection.

16 THE COURT: Overruled.

17 THE WITNESS: Yes. I told them, "I'm
18 leaving." Thomas stood up like as soon as that
19 happened. "That's it. I'm filing criminal charges with
20 the USPTO for trademark infringement." He had said it
21 off as if he was reading the law, and knowing I was
22 going to walk away. That's how it felt to me. He had
23 scripted this on his way there.

24 BY MS. LAVAN:

25 Q. If you go to Exhibit 26, Page 334, is this a

1 text from Thomas Aloia on August 26th?

2 THE COURT: What page?

3 MS. LAVAN: Page 334, Your Honor.

4 THE WITNESS: Yes.

5 BY MS. LAVAN:

6 Q. What does that say?

7 A. His text at 7:06 p.m. It recites a motion.
8 The TEAS treats infringement as a federal crime. The
9 value is calculated under two parts, however.

10 Setting aside the purported value or loss value,
11 we're better off focusing on the value of our true
12 skills and value-added relationship and future work.

13 Q. Was that one of the instances where he
14 threatened to file criminal charges against you?

15 A. In my opinion, yes. It doesn't actually say
16 in this one that he's going to file them. However,
17 other communications that day, that meeting, and then
18 an E-mail shortly thereafter making demands upon me
19 did say or may have said, "In order to avoid criminal
20 prosecution."

21 Q. Did you then, in your words, give Thomas
22 Aloia approximately \$53,000?

23 A. Yes. I went home and, first, I like diffused
24 the situation because he not only said he was going
25 to accuse me of the crime of representing the company

1 that I thought I owned, but he said he was going to
2 accuse me of the crime. He said he was going to
3 collude with my former business partner, Bill
4 Hessert, and take a picture of a business magazine I
5 was on. He said, "I'm going to create a website with
6 the photo of your magazine cover, and I'm going to
7 put links to" -- he knew Bill Hessert had taken a
8 copy of my personal hard drive.

9 And he said, "I'm going to take all the
10 personal docs I can get off the hard drive and put links
11 on there."

12 He threw his hands up as if he was clever.

13 I'm saying, "What? I'm walking away from a
14 negotiation."

15 Q. Did you discover later that he colluded with
16 your partner who you were in dispute with at the
17 time?

18 A. I did. The two of them testified that they
19 started speaking.

20 THE COURT: Who's "the two"?

21 THE WITNESS: James Chester and Thomas
22 Aloia.

23 MR. WATSON: Objection to Hessert.

24 THE COURT: Don't tell us what Mr. Hessert
25 said. He's not a party. Tell me what Mr. Aloia said.

1 THE WITNESS: Even though it was in his
2 deposition Tuesday?

3 THE COURT: Yes, sir, he's not here.

4 THE WITNESS: Mr. Aloia testified that he
5 contacted Bill Hessert in early October. He said early
6 October, I believe, of 2010.

7 THE COURT: 2000 when?

8 THE WITNESS: I'm sorry, 2016.

9 BY MS. LAVAN:

10 Q. Was that the time when you were in a dispute
11 with Bill Hessert?

12 A. Yes. No, this is a year later, but the
13 dispute with Bill Hessert had been going on. I had
14 recently filed a suit to enforce our prior settlement
15 agreement that Hessert hadn't paid on under that
16 time.

17 MR. WATSON: The question was "did" or
18 "was"?

19 THE COURT: Sir, you can't coach the
20 opposing witness. The question was "did." The
21 objection is to the form. The objection is sustained.

22 And you answered it.

23 BY MS. LAVAN:

24 Q. Even after the August 26th Café meeting, did
25 Thomas and John still try to get money from you?

1 A. Yes, so I diffused what I thought was the
2 immediate situation. We had this agreement in place
3 with John where, again, my dba would get the money
4 from the clients. These came in wire transfers. The
5 clients knew. They kept making the wires, the same
6 payments to the same companies. I would get the
7 money, subcontract all the work to Decus
8 Construction, Inc. which were not written contracts,
9 and Decus Construction, Inc. would subcontract out to
10 all the subcontractors who did everything.

11 Q. Look at the E-mail on Page 41, I'm sorry, the
12 text.

13 A. Yes.

14 Q. It says "7:35," and I guess it was Tuesday,
15 September 13th, if you look at the page before.

16 A. Yes.

17 Q. What does that text say at "7:35"?

18 A. "We're trying to avoid that scenario. Maybe
19 enviable, however, John and I remain optimistic.
20 You'll make good on your promises."

21 Q. At that time, were they still trying to make
22 you pay them money?

23 A. They were trying to get me to give them
24 additional money, and they were trying to get me to
25 give them all the opportunities. They were trying to

1 get me to close my existing business that I closed in
2 2013. Thomas gave me a whole list of demands, and in
3 exchange for that the only thing for consideration is
4 that they not file civil or criminal charges.

5 I think he said, "Take other actions," which he
6 referenced the website he's going to create and had
7 stolen from my personal hard drive, put that up on the
8 Internet.

9 Q. Were they offering to pay you anything for
10 those opportunities?

11 A. The only thing that in theory otherwise
12 offered consideration was that I would get the
13 opportunity that they wanted to give me to be a
14 partner in their Decus Construction company. So it
15 was "Take our offer and do all these other things and
16 we won't file charges."

17 But that offer would be for the consideration
18 of working in the company. He didn't say they would;
19 affirmatively.

20 He said, "John and I will work towards doing
21 this," which at that point this crafty person I knew,
22 "No, that's not working towards it. Am I going to trust
23 your promise" --

24 Q. Did that threat come from your attorney,
25 Kevin Watson, as well?

1 MR. WATSON: Objection.

2 THE COURT: Sustained.

3 BY MS. LAVAN:

4 Q. -- to file criminal charges against you?

5 MR. WATSON: Objection.

6 THE COURT: Sustained. Unless you can show
7 the communication.

8 THE WITNESS: Do you have that letter?

9 MS. LAVAN: I'll move back to that
10 communication.

11 THE WITNESS: I went to the police multiple
12 times and the FBI.

13 MR. WATSON: Objection.

14 THE COURT: There's no question.

15 BY MS. LAVAN:

16 Q. Did you go to the police after that?

17 A. I did. I did go that day.

18 Q. Which day are you referring to?

19 A. August 26th. I went that day and just spoke
20 to a detective briefly. Didn't really do anything
21 because he said, "It sounds like a civil matter."

22 I said, "Whatever." I was just flabbergasted.
23 The reason why communications were continued at all was,
24 A, me trying to allay these threats, trying to diffuse
25 it and slowly back out of somebody pointing a gun to my

1 head, like the equivalent. Not necessarily the
2 equivalent.

3 But anyhow, I'm thinking how. There's one of
4 these exhibits, I don't know which, is an accounting of
5 a job, the South Jersey CMO job that you'll hear about.
6 Under that accounting I referenced all the payments that
7 were made by the owner. The money that I had already
8 paid out and how much of the subcontracts we can leave
9 with Decus Construction contract agreements and they can
10 essentially not give me the money back, but give me the
11 value of that money by paying the bills through their
12 entity.

13 That proposal was out there, and it sat. I
14 paid my subcontractors here. I paid you this and if you
15 pay all these line items, then it's close to how much
16 I've been paid in total.

17 So they could effectively pay it back by what
18 would otherwise be my bills for me. If somebody says I
19 won't give you \$100, but I'll pay your cable bill next
20 month, it felt like the same thing. That's what they
21 offered. They were asking for accounting documents.
22 Tell me what the outstanding obligations are. Tell us
23 what all this is, and advice from counsel to give very
24 limited information and seek to get the money back.

25 Q. And if you go to Page 18 of Exhibit 57 --

1 A. Yes.

2 Q. -- are these all text messages between you,
3 John and Thomas?

4 A. Yes.

5 Q. If you look at 3:31 p.m.

6 A. Yes, on Thursday, October 13th, where Thomas
7 says, "Spoke to Bill."

8 Q. What does Thomas say in the text message?

9 A. Thomas says, spoke to Bill and Peace and a
10 less-than sign over justice.

11 I didn't know how speaking with somebody when
12 knows me to be in a heated dispute would create justice.

13 Q. Did you find out later that they were working
14 together?

15 MR. WATSON: Objection.

16 THE COURT: If you say it calls for
17 hearsay.

18 Did one of them tell you they were working
19 together?

20 MR. WATSON: It's also leading, Your Honor.

21 THE COURT: Yes, rephrase it.

22 BY MS. LAVAN:

23 Q. This text here, Spoke with Peace Justice.

24 What did you understand that to mean?

25 A. That he was, in fact, following through with

1 his plan that he mentioned to me on August 26th to
2 get with my uncle, get access to all my stuff,
3 including a personal hard drive. Every digital file
4 that exists was backed up from computer to computer
5 to computer, and then he was talking to him about
6 doing that and creating a website to try to defame
7 me.

8 Q. The next page, Page 19, there is a text
9 message from you.

10 In that text message, you had proposed certain
11 terms, or did you propose certain terms?

12 A. Yes, I did.

13 Q. Were those to resolve the matter between the
14 three of you?

15 A. Yes.

16 Q. As part of that proposal, did you text them
17 and ask them to relinquish the \$53,090.29 extorted
18 under the threats?

19 MR. WATSON: Objection, leading.

20 THE WITNESS: Would you like me to tell you
21 what this says?

22 THE COURT: Yes, that's how we do that.

23 THE WITNESS: I'm learning.

24 So I give them the terms of how I felt at that
25 time. I believe at this time we were trying to get the

1 attorneys to meet. I was pushing, and Drew from my
2 attorney's office, Drew was telling me that he was being
3 evasive and kept pushing meetings. Shortly after this
4 we had a meeting scheduled. That meeting was canceled,
5 and then I found out they filed suit.

6 I'm saying, "I want the \$53,000 back. What did
7 I say? I said, I want the \$53,000 back under your
8 threats to file criminal charges, conspire with Bill to
9 engage in defamation and libel. Form a website with
10 such intent."

11 I said, "Do that by Wednesday at noon, and
12 provide me acceptable release from Decus." I went on
13 about a bunch of stuff about dropping what I thought
14 were criminal complaints for the extortion. I thought
15 they were in complaints actually. It turns out they
16 weren't.

17 So to the extent that I can clear that up, they
18 are not actual complaints. They are criminal reports.
19 But I spent a number of hours with the Cherry Hill
20 Police who ultimately said it wasn't in their
21 jurisdiction and, since, federal investigators from the
22 FBI.

23 BY MS. LAVAN:

24 Q. Down at the very bottom about a text at
25 8:00 p.m, it says something to the effect -- "Do the

1 above and I'll waive."

2 You indicated that you were owed \$9,055.54?

3 A. I said, "I'll waive the \$9,005.54 owed to me
4 from the consulting agreement, and you can even keep
5 the approximately 22,000 advance," on work not
6 performed for the data center that I had given them.

7 Q. Is that the 21, 22,000 that you were
8 referencing?

9 A. 21,443 that I paid them.

10 Q. That was the testimony that you gave to them?

11 A. Yes.

12 Q. Their text comes next. It says, "Mark,
13 please direct all correspondence."

14 What does that say?

15 A. "To an attorney." He says I'm a criminal.
16 This is Thomas.

17 He said, "Mark, please direct all
18 correspondence to our attorney, Kevin Watson. You've
19 been told on numerous occasions. You are a criminal.
20 We exposed you for what you are and have plenty of
21 proof, forgeries, misrepresentations, embezzlement, et
22 cetera, et cetera."

23 Q. Did they continue to threaten you?

24 A. Yes, through counsel, which actually
25 surprised me and some others.

1 Q. Exhibit 58, is this one of the draft
2 shareholders agreements that they had E-mailed to
3 you?

4 A. This is the one that I received, I believe.
5 I'm fairly certain it's marked 701 up in the top
6 right. This is the one that I referred either
7 February 18th or 26th, the first time I received a
8 draft shareholders agreement. As you'll see this
9 document, it says "This agreement made this blank day
10 of blank 2016 by and between," notably 2016, not 2015
11 when they say they formed the entity.

12 "Whereas, the shareholders are the owners of
13 all of the outstanding shares of an asterisk, an
14 asterisk corporation hereinafter the company."

15 And then it has "shareholders," no names, a
16 number of shares.

17 I took this to mean that in 2016 there was an
18 existing shareholders agreement in place that says 2016,
19 and that this document represents the formation of a
20 shareholders agreement.

21 Q. At a later time, did Thomas represent that he
22 and John had a written shareholders agreement or
23 agreement of some sort?

24 A. They both referenced that they did one in
25 their depositions. They now say that they did one in

1 2015.

2 Q. That was news to you? Was that news to you?

3 A. At that point in their depositions, nothing
4 would be news to me.

5 Q. You were not aware of any executed agreement
6 between John and Thomas?

7 A. No. In fact, the documents like this
8 explicitly reference that it didn't exist.

9 Q. If you look at Exhibit 59, it's an E-mail
10 dated May 1st, 2016 from John Sciotto to Thomas Aloia
11 and Mark Heenan.

12 A. That's correct.

13 Q. Does that E-mail outline some of the
14 intentions between the three parties at that time
15 frame?

16 A. So this is the end of April.

17 THE COURT: What document, counsel?

18 MS. LAVAN: Sure. It's Exhibit 59.

19 THE COURT: Thank you.

20 THE WITNESS: So this document, my E-mail,
21 put comments into my E-mail below. This is April 29th.
22 My last invoice for the Brewerytown project was the
23 28th. So Thomas had sent something about or said
24 something about -- let me see the prior. Here, this is
25 April. "Mark, correct. We did discuss getting you

1 payment for the time spent on Decus projects, and I'm
2 happy to cut you a check for that time. We also
3 discussed our partnership, and that it had to be equal
4 to all parties." He said, "You either want to a partner
5 or an employee. You can't have it both ways."

6 BY MS. LAVAN:

7 Q. What page is that?

8 A. That's at the top. It says "0723."

9 Q. And what paragraph?

10 A. It looks like an E-mail transmission from
11 Thomas talking about the partnership that it had to
12 be equal for all parties.

13 Q. And so if you're looking at this E-mail,
14 there were comments going back and forth between all
15 of you?

16 A. Right.

17 Q. What is it that John says to you on the
18 second page down in the second paragraph starting,
19 "I've been pretty open to this." And then it says
20 "period, as we discussed."

21 What does that say?

22 A. Second paragraph, I was talking about -- I
23 understand there's a partnership opportunity. Every
24 opportunity I brought.

25 Q. It starts with "As we discussed"?

1 A. Yeah. John says, "As we discussed, we would
2 open a new entity, which Thomas has done, that is
3 free of legal issues. I believe referencing all that
4 their -- MM lawsuits, probably multimillion dollar
5 lawsuits they had against them. The Liberty lien
6 they had on the Brewerytown project had gone awry.

7 He said, "I made suggestions working together.
8 The proposal presented back was fairly one-sided by
9 Mark. I'd like to move forward in an open and equal
10 forum. We need to operate this way. Open and equal
11 forum notably. I need to operate this way, or it's
12 pointless to continue."

13 Q. In reference, where it says "As we discussed,
14 we would open up a new entity," is that the
15 conversation that you were talking about earlier in
16 your testimony?

17 A. November 24th, 2015.

18 Q. If you go two paragraphs below that, where it
19 starts "We have a new clean entity," can you read
20 that?

21 A. Where are you?

22 Q. I'm four paragraphs down, middle to end of
23 the paragraph.

24 A. Yes.

25 THE COURT: Who is saying this?

1 THE WITNESS: So this is from Sciotto, who
2 was chiming in on a conversation.

3 THE COURT: What does he say?

4 THE WITNESS: My impression was that he was
5 talking about me bringing up the fact that I'm the only
6 one doing anything in this new company. We are at the
7 end of April.

8 He said, "I didn't want to get into a
9 back-and-forth about honoring commitment and who is
10 doing what on a daily basis."

11 I wouldn't want to at that point if I was him.
12 We have a new clean entity for us to move forward with
13 or not.

14 BY MS. LAVAN:

15 Q. Was that your understanding that they had
16 formed an entity with all three of you being
17 partners?

18 A. Like absolutely. There were references, just
19 like seeing this, that can move forward. To me, my
20 impression of that was that this was the collective.
21 There would probably be places if you dissect things,
22 it will look like, see how I used -- they'll find the
23 crafty words. But overarching representation of
24 everything is that they had formed it with me as a
25 partner, and then so I carried on that way.

1 This is a new company. This supposition that I
2 wasn't to brag about being part of a brand that didn't
3 exist last week is crazy to me.

4 MS. LAVAN: Your Honor, when is our next
5 short break?

6 THE COURT: 2:30.

7 THE WITNESS: There's a notable thing here.

8 THE COURT: There's no question.

9 BY MS. LAVAN:

10 Q. Mr. Heenan, at some point, did Thomas or John
11 interfere with your relationships? And if so, which
12 ones did they interfere with, your projects?

13 MR. WATSON: Objection, leading.

14 THE COURT: No, overruled. The problem is
15 it's duplicative.

16 Do you believe there's a claim that somebody
17 interfered with the business relationship?

18 THE WITNESS: Yes.

19 THE COURT: Which ones, if any?

20 THE WITNESS: A number of them
21 subsequently. I'll start with Gloucester Data Center,
22 because that's very clear and small party. The
23 Gloucester Data Center project, as I said, I had been
24 involved in the projects at that property since 2011.
25 The owner of the LLC that was developing it at that

1 time, I think my relationship with him began in 2011 or
2 2012. The solar world is a small market.

3 So we've been working together for years and
4 years. Then with this project, when I left the
5 partnership with my uncle, this guy, I actually told --
6 can I say what I told him?

7 THE COURT: What you say is fine.

8 THE WITNESS: I actually told him that I
9 wouldn't contract with him right away for the solar work
10 because I didn't want to create any muddy area with my
11 uncle. At the end of this, Decus -- I was getting phone
12 calls, you know, and wasn't answering at first.

13 And I said, "I'm not taking it. I don't want
14 to fight with Bill about me taking opportunities right
15 now."

16 There were hard existing opportunities. When
17 it's done, it's done and that's a different story. But
18 we were still in negotiations together then.
19 Ultimately, he reached out to me, and I can't quote him,
20 but he reached out and obviously came with Decus -- you
21 know, wanted me to help him develop the solar project
22 and the data center project with me because I knew
23 everything about the properties and everything else.

24 So when I was involved with Decus again, he
25 knew about my uncle's and my uncle had been giving him

1 some problems. I can't say problems. Don't let me
2 misrepresent that. He didn't want to be involved with
3 my uncle. So he hired me to work for him and with him
4 on both. That went on.

5 We are still developing, getting all the
6 approvals, doing the design into late -- there was a
7 time in either late August, early September, right after
8 their -- I don't know that I can characterize it as
9 extortion, but right after -- I'll call it a shakedown,
10 if that works.

11 THE COURT: Is this the Café meeting? Call
12 it the Café meeting. August 26th, 2016.

13 THE WITNESS: Right after that meeting,
14 shortly after that meeting, he was trying to get ahold
15 of me and I was just not wanting to address this issue.

16 MR. WATSON: Objection, Your Honor.

17 THE COURT: What was the interference?

18 BY MS. LAVAN:

19 Q. How did they interfere? How did he interfere
20 with that contract?

21 A. I would say the single most critical thing
22 that they did was knowing that they didn't have a
23 valid contract or change orders. There were no
24 executed change orders. I can't speak to the
25 construction lien law. Somebody else can do it for

1 me.

2 You need an executed contract to lien a
3 property, as I understand it. Any dollar value or
4 anything you're claiming has to be on a piece of paper
5 that's fully executed by both parties. They knew that
6 they didn't even have a valid contract on it.

7 B, there were no executed change orders that
8 they had any evidence of.

9 And, C, that they had done nominal work at all
10 over these eight months. But they took one invoice that
11 they found that was between me and my client, the owner.
12 They point to that invoice, and they filed a lien on the
13 property. It was in negotiations, and he had the
14 property under contract.

15 Their lien, as it stood there and may still, is
16 what completely killed the project because the owner
17 couldn't close on the land. No investment, no investors
18 wanted to touch a project that has 100-something-dollar
19 lien on it.

20 And so now the project that I've been working
21 on for years is totally dead of because the approvals
22 for the solar in the State of New Jersey. You can only
23 get the approval once on a particular property and
24 address and tie-in point. It expires a year later. So
25 you had to have that built in a period of time, and

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1 their lien prevented the closing on all those
2 agreements.

3 Q. So what is your estimate of the value of that
4 contract had it gone through?

5 THE COURT: To who?

6 THE WITNESS: The Gloucester Center
7 project?

8 THE COURT: To who?

9 BY MS. LAVAN:

10 Q. To you.

11 A. As the builder, so there's no dispute, I can
12 tell you what they valued it at. I think they valued
13 the profit as about four-something million,
14 4.2 million. However, I'm working off of John's
15 estimate. It was for a building 50-percent too
16 large, so say about 2.4 million on that job.

17 Q. So had that contract gone through, the value
18 to you would have been 2.4 million; is that right?
19 Minus expenses?

20 A. Potentially. No, the contract value would
21 have been upward of 4 million. I'll call it gross
22 profit respective of overhead and profit.

23 Q. So we're clear, what would the gross profit
24 have been to you had that contract gone through?

25 A. Again, the owner and I set the contract up in

1 a specific way for a specific reason. I can't say
2 for certain that it would have been 100-percent my
3 company. But I think about \$2.4 million for the
4 project that would have been built out over 18 months
5 would have been the gross profit.

6 Q. That project, did that project ever go
7 through?

8 A. No, because of their lien. Destroyed all the
9 transactions.

10 Q. What other projects were not performed
11 because of John --

12 A. The South Jersey CML. They claimed that I
13 owed them money, but I don't know how. It was a
14 manufacturing facility in Bellmawr that I referenced
15 with you. So I did that project. There was an
16 expansion to that project, a phase two. It was about
17 a half-million-dollar job. I think I estimated like
18 \$35,000 or so in profit on that.

19 They also intended to put a solar installation
20 up on the roof that was about a million-dollar
21 installation, which would have profited about \$100,000
22 off of that. One of the owners of that CML also owned
23 and owns and develops a bunch of Dunkin' Donuts, which
24 we'll reference, I'm sure. That owner subsequent to
25 them filing a lien also on the South Jersey CML Project,

1 despite the fact that the owner had even put them on
2 notice, we have a contract with Heenan Holdings.

3 The owner put it in writing in response to
4 their attorney, and then they filed a lien saying they
5 don't have a contract. They say they don't have a
6 contract, but they want to lien the property, until
7 those opportunities for the Dunkin' Donuts got squashed
8 also.

9 Q. How many Dunkin' Donuts?

10 A. There were two referenced at the time.
11 Again, there were ten people who owned the
12 manufacturing facility, and I've gotten to know them
13 a lot better. I knew their business manager and a
14 couple people back then at the time. I executed the
15 formation of an LLC for a project in Trenton, New
16 Jersey for which we got an \$11 million grant.

17 The documents I put together were used in my
18 testimony, used as an \$11 million grant for moving a
19 manufacturing facility into Trenton. I signed the
20 operating agreement, but the whole thing fell through
21 because so many of the partners were partners at the
22 CML.

23 Even though we were awarded the grant, we were
24 awarded \$11 million to build an \$8 million facility.
25 \$11 million came over ten years, but that hasn't moved

1 forward for me at least in part or largely, I could say,
2 solely because of the liens that they filed on who were
3 my new partners and this other manufacturing
4 development.

5 People I'm associated with filed liens
6 improperly and created a bunch of headaches and costs
7 for people who I'm getting into a partnership with, and
8 it doesn't happen. And then I'm out.

9 Then there was a hotel in Delaware that Sam
10 Patel actually had me draft the contract and hand it to
11 him and we had a handshake agreement in front of Wayne
12 Atchley who will testify today or tomorrow, I suppose.
13 Sam told me, "We got a deal. Send the contract."

14 Sam, after their lien subsequently said I
15 couldn't do that.

16 MR. WATSON: Objection.

17 THE COURT: Yes, it's hearsay.

18 THE WITNESS: I requested and provide an
19 executed contract for the project for a hotel. I think
20 it was about a \$4.2 million hotel. Then their lien is
21 filed. Now, months and months and months later, I do
22 not have a contract for that. Why?

23 BY MS. LAVAN:

24 Q. Any other projects --

25 THE COURT: Before we get to the other

1 projects, let's take a break. It's 2:30. We'll come
2 back and hear about the remaining projects. Let's take
3 a ten-minute-or-so break. The snack bar is also open at
4 this stage. You're welcome to go to the snack bar and
5 then come back up.

6 (The jury exited the courtroom at
7 2:30 p.m., at which time there was a recess held.)

8 (The Court resumed the proceedings at
9 2:45 p.m.)

10 THE COURT: We were talking about various
11 types of what you believe to be interferences, and
12 counsel is going to the next thing so this was a good
13 time to break.

14 Let's continue, Ms. LaVan, with the examination
15 of Mr. Heenan.

16 BY MS. LAVAN:

17 Q. Are there any other projects or jobs that you
18 lost personally because of John Sciotto or Thomas'
19 interference?

20 MR. WATSON: Objection, Your Honor. They
21 are not parties to the case.

22 THE COURT: Yes, true. Sustained. Caused
23 by this defendant. You have to rephrase the question,
24 the conduct of those two individuals not in the case.

25 MS. LAVAN: Your Honor, can we address that

1 at sidebar?

2 THE COURT: You can certainly address it.
3 This will be one time I let this happen. I'll do this
4 quickly.

5 (Sidebar conference was held.)

6 THE COURT: The question was raised as to
7 the two individuals. The question is better phrased
8 through the companies versus the individuals?

9 MS. LAVAN: I have the waivers that I sent
10 to Mr. Watson, a waiver that he accepted service.

11 THE COURT: But you never filed them, so
12 they are not in the case, right? You may have gotten
13 the waivers that that's good, but someone should have
14 filed them. So now there's not enough notice for them.

15 Moreover, it's confirmed by the fact that not a
16 single pleading in this case by the defendants included
17 a third-party defendant's response, which would have
18 been curious on the issue. So you are clearly on notice
19 that they believe they were not in the case.

20 (Sidebar conference concluded.)

21 BY MS. LAVAN:

22 Q. I'll rephrase that question.

23 What other projects do you believe that you
24 lost because of Decus' interference?

25 A. Specific projects? I don't know that I can

1 say. On the Trenton CML, there was an investor that
2 I met with, and I met with one of my partners,
3 another investor. It was after some of the things
4 that happened, and he was looking at a document again
5 that had been created. I had done renderings of the
6 things. There was the Decus logo on the renderings
7 down at the bottom of the pages. He said to me --

8 MR. WATSON: Objection.

9 THE COURT: Sustained.

10 THE WITNESS: The conversation came up
11 about any affiliation with them, and I said no. That
12 was at the beginning of the conversation. I believe
13 that's what allowed the conversation to continue that I
14 didn't have any affiliation with them. I have an issue
15 with that fact.

16 MR. WATSON: Your Honor --

17 THE COURT: I'm going to renew that
18 objection.

19 Is this somebody speaking to you where you
20 turned down a contract?

21 THE WITNESS: No.

22 MR. WATSON: He's trying to get at it a
23 different way, saying the communication and now they
24 have the substance of it. I would move to strike.

25 THE COURT: No, no. The law is exactly the

1 opposite on hearsay and tortious interference. The
2 question has to be asked the right way. The question
3 was not asked the right way yet. To get to the
4 question, it could be offered to prove the tortious
5 interference but to prove what happened in a general
6 event.

7 Sir, don't tell us what somebody said. Tell us
8 what happened. You can't say what somebody said, but
9 you can tell us what happened. I have to wait until the
10 question is posited now.

11 MS. LAVAN: Thank you, Your Honor.

12 BY MS. LAVAN:

13 Q. Mark, tell us what happened in this
14 particular project that you are referring to.

15 A. Again, there was an investor that was looking
16 to come into the Trenton CML, the one that I referred
17 to where we had gotten the grant and ADP, because
18 it's actually a tax credit, and the grant is awarded
19 over ten years. So ADP being a payroll company.
20 They take that tax rate credit and liquidate it, give
21 us the money up front and use that tax credit over
22 the ten years. So the investor was going to
23 participate in that.

24 When I walked into a meeting about the project,
25 they started the meeting with -- first off, I actually

1 knew them locally because they develop a lot of
2 properties in the Philadelphia area on the PA side of
3 the bridge. It was in PA. They said, first of all,
4 "What is your involvement with them?"

5 MR. WATSON: Objection.

6 THE COURT: Sustained.

7 BY MS. LAVAN:

8 Q. Did you lose that construction project?

9 A. I am not constructing that project, and I'm
10 no longer a shareholder because on that project part
11 of my profits were how I earned my equity in the LLC.

12 Q. About how much was your loss?

13 A. My equity position was going to be \$400,000.
14 Gross profits anticipated on the project were
15 anticipated to be about \$650,000, I believe.

16 Q. Was this the solar portion?

17 A. No. This was the Trenton CML, the
18 manufacturing facility in which we were pushing
19 around the operating agreement for it. That
20 operating agreement, again, I signed it and other
21 parties who are also members of the South Jersey CML
22 refused to sign it with me on this after Decus' lien.
23 Having drafted it with me on there before Decus'
24 lien.

25 Q. What is the lost profits on the Gloucester

1 Data Center?

2 A. Again, I can't speak to it. Because the role
3 we would play in the project wasn't really clearly
4 defined, I can't say. There are a lot of ifs there.
5 If I had gotten the contract to build it as the sole
6 contractor, as the sole design build contractor,
7 there probably would have been about \$2.4 million.

8 Had I continued it in owner's representation
9 capacity as an owner's rep where I'm just helping them
10 coordinate the architect, the contractor and the design
11 professionals and everything, that would have probably
12 been just on what we had proposed for the stuff that
13 Decus filed a lien in association with, but was never
14 done, that went to \$170-some-thousand on that and that
15 was just before we started the project, it probably
16 would have been about another 4 or \$5 million.

17 Q. What about the lost profit on the Gloucester
18 Solar Farm?

19 A. That, according to this estimate that I
20 prepared, I spoke about it earlier. This one is 12,
21 according to this estimate.

22 MR. WATSON: What exhibit number?

23 THE WITNESS: Exhibit 12, 0376. Gloucester
24 Solar, the fee would have been \$876,000.06 -- \$631.27 at
25 the time of this estimate, plus the general conditions

1 have value as well because that's the money that you use
2 to keep a business running. The fee is the profit is at
3 the bottom line, if you will.

4 MS. LAVAN: Mr. Heenan, that's all I have
5 for you.

6 THE COURT: Mr. Watson, do you wish to
7 redirect?

8 MR. WATSON: We do, Your Honor. We need a
9 couple of minutes to set up the screen.

10 THE COURT: This is called recross, ladies
11 and gentlemen. The witness comes up on cross, they can
12 get direct and then the opportunity comes back to
13 recross, which is an opportunity to cross-examination
14 based upon anything that was said in the direct
15 examination, and then Ms. LaVan will have an opportunity
16 to do redirect, about limiting the scope of anything
17 that is addressed now. We narrow it down, but anything
18 that was addressed by Ms. LaVan, Mr. Watson can address.

19 REDIRECT EXAMINATION

20 BY MR. WATSON:

21 Q. Good afternoon, Mr. Heenan. How are you
22 today?

23 A. Tired.

24 Q. Me too. You said you would have received all
25 of these profits on all of these projects but for the

1 mechanics liens that were filed on unrelated
2 projects, correct? Yes or no?

3 A. Defined "unrelated."

4 Q. I hear what you're saying. Not on the South
5 Jersey CML Project.

6 A. The second phase was related.

7 Q. Right, but had those liens not been filed by
8 my client, you're saying that you would have received
9 all these projects, correct?

10 A. I believe, and, again, we get to contributing
11 factors. In some instances the largest contributing
12 factor, but the sole contributing factor to not be
13 working on those are Decus' actions, including their
14 liens but not limited to their liens.

15 Q. You talked about liens. I'm not sure that
16 we've talked about the other actions.

17 But let me ask you, do you have any
18 communications, whether it be E-mail, a letter or a
19 text, from these project owners saying that because of
20 those liens we're not giving you the job?

21 A. I may have a significant amount as we tried
22 to admit to evidence this morning. There were a
23 bunch of E-mails at the time that Aloia --

24 MR. WATSON: Objection, Your Honor. He's
25 talking about things that are not in evidence.

1 THE WITNESS: I say I may have a bunch, and
2 I don't know to the extent that that's objectionable.

3 THE COURT: Stick to the answer of the
4 question. It's hard on cross-examination. Switch your
5 gears a little bit and just answer the question. For
6 example, if you're holding a deck of cards and I say,
7 "Do you have a two of Clubs," you don't come back and
8 say, "No, I have a two of Heart." You would just say,
9 "No, I have don't have a two of Clubs."

10 BY MR. WATSON:

11 Q. Have you produced in any litigation any
12 documents, be it an E-mail, a text, or a piece of
13 correspondence, from these owners saying "We're not
14 going to give you the job because of the liens"?

15 A. Not explicitly in those words. However, it's
16 strongly suggestive of that.

17 Q. What would that be?

18 THE COURT: What documents would they be?

19 BY MR. WATSON:

20 Q. Yes.

21 A. There's a text message from Alex Lemus
22 regarding the Gloucester Solar and Data Center
23 project. It was the lien was filed or something.

24 He said, "This is a big problem. First, I had
25 to pay \$50,000 to get rid of an engineer. Then your

1 uncle wanted \$25,000 to get rid of them. And now this."

2 Q. Can you pull that up? Do you have it in your
3 documents?

4 A. I don't recall exactly what exhibit. I'm
5 sure you know it exists, and if you really cared to
6 look at it --

7 Q. I've seen it. I want to get it in front of
8 the jurors now, so that they can see exactly what
9 you're talking about.

10 Can you go to 103?

11 A. Certainly.

12 Q. This is an E-mail dated October 16th from
13 Trish Pappano.

14 Trish Pappano worked with Alex Lemus, correct?

15 A. You must represent the E-mail.

16 Q. I'm sorry.

17 It's from Alex to Trish, correct, with a copy
18 to you?

19 A. Yes.

20 Q. Trish Pappano worked for Alex, correct?

21 A. On the Gloucester --

22 Q. Strike that. It's not important. She'll be
23 here to testify.

24 So when Alex sent you an E-mail, high
25 importance, on October 16th, 2016, Mark, "This is

1 outrageous. You need to take care of your mess. Your
2 mess. I have to pay \$25,000 to get away from your
3 uncle, Mr. Hessert."

4 Correct?

5 A. I presume that's who he wanted to get away
6 from.

7 Q. "50,000 because nobody paid DDM."

8 Who is DDM?

9 A. DDM is the civil engineer who worked for the
10 developer before me.

11 Q. He thought that was your mess. He said,
12 "This is outrageous. You need to take care of your
13 mess."

14 A. He didn't say it was my mess.

15 Q. "And now this," correct?

16 A. He didn't say --

17 Q. Does he say "I am not giving you any more
18 projects" because of the lien of Decus?

19 A. Not in that specific E-mail. In a specific
20 way. However, it strongly is suggestive, and I think
21 you're trying to be --

22 Q. But you think it says that through suggestion
23 or implicitly?

24 A. I think he's referencing my mess as ever
25 being involved with them and their claims to be

1 involved in their project.

2 Q. Let's go back to these profit calculations
3 from the jobs you lost.

4 Were any of these contracts executed?

5 A. Yes.

6 Q. Which ones?

7 A. The contract for the Central Jersey CML, the
8 project in Trenton that was executed, as well as the
9 ownership agreement. So the contract between my
10 company and Holdings and Central Jersey CML LLC was
11 executed, as well as the operating agreement of
12 Jersey CML LLC of which I was given 6 percent, which
13 I had received an \$11 million grant.

14 Let me think off the top of my head. Dunkin'
15 Donuts project. No, no other ones were executed other
16 than those two.

17 Q. Dunkin' Donuts and the Central Jersey CML
18 LLC?

19 A. Dunkin' Donuts was not.

20 Q. Central Jersey CML LLC, and what was the
21 other one?

22 A. The Dunkin' Donuts was executed, but it was
23 completed. The work was completed.

24 Q. So you didn't interfere in that contract.

25 You completed it?

1 A. It was interfered in, yes.

2 Q. But you completed the job?

3 A. Ultimately I did.

4 Q. They didn't pull out because of Decus,
5 correct? They didn't decide to walk away from you
6 because of Decus?

7 A. I believe they did.

8 Q. I thought you said you completed the job?

9 A. To walk off of not that specific project, but
10 the owner was also the owner of the Dunkin' Donuts
11 project, the CML, but the subsequent ones he did.
12 The Mt. Laurel project he did.

13 Q. So the Central Jersey CML LLC contract, you
14 had a written contract in hand?

15 A. Central Jersey, yes.

16 Q. How much was that for?

17 A. It was an owners representation project with
18 an initial estimated budget, I believe. My contract
19 would be as construction manager as cost plus fee.

20 So what you do --

21 Q. No, no, no. How much was that contract for?

22 A. A minimum of \$400,000.

23 Q. So let's make it easy.

24 Can you just pull up the contract in the
25 exhibits?

1 A. I don't know when it is.

2 Q. Is it in there, the Central Jersey contract?

3 A. I haven't seen all the documents.

4 Q. Have you produced it in this litigation, sir?

5 A. I haven't seen all of the documents that were
6 produced. I just found out two days ago that a lot
7 of documents that your clients should have as well
8 were not produced, and it appears were moved by
9 Bill Hessert when he hacked into my E-mail in the
10 beginning of November when he was talking to them.

11 MR. WATSON: Objection.

12 THE COURT: You have to answer the question
13 about this.

14 THE WITNESS: Don't know where it is.

15 MR. WATSON: If you can find it, let us
16 know. I'll represent to you that they are not in these
17 documents.

18 BY MR. WATSON:

19 Q. When this contract was executed and they
20 decided to walk away because of Decus, is that your
21 testimony under oath?

22 A. It is mine, and there will be others.

23 Q. When they decided to walk away, did they send
24 you a termination letter saying, "This is why we are
25 walking away"?

1 A. No, because they haven't terminated it.

2 Q. I'm sorry, I thought you said you lost the
3 contract?

4 A. They've notified me that I won't be building
5 it.

6 Q. Because of Decus?

7 A. Yes, specifically.

8 Q. There's a notice out there, written notice,
9 that says, "We're not going to build this
10 multimillion-dollar project because of Decus."

11 Is there a letter out there?

12 A. You're mischaracterizing that.

13 Q. You're the one saying --

14 A. Not that they are not going to build it in
15 general, but that I'm not going to build it.

16 Q. So you're not going to build it.

17 You've been terminated, right?

18 A. The formal termination hasn't come through.

19 Q. Is it suspended, or is it terminated?

20 A. I've been provided notice that the
21 termination will come. So you tell me.

22 Q. Where is that written notice?

23 A. Again, the notice isn't written in such
24 explicit terms. However, you'll get testimony on it
25 tomorrow, I'm sure.

1 Q. Is there a written notice? You just said
2 that there is written notice.

3 Is there, or isn't it?

4 A. I tried to clarify.

5 THE COURT: I'm sorry. It came across that
6 way.

7 BY MR. WATSON:

8 Q. Is there a written notice, or isn't there?

9 A. There is not written notice. I provided
10 notice.

11 Q. So now there's not written notice.

12 But you were provided --

13 A. I said, I was provided notice. I could
14 provide you notice right now that I want to drink my
15 water. I don't say that intending to be clever or
16 crafty. I think you're trying to frame me as such.

17 Q. Mr. Heenan, let's go to August 26th of 2016
18 in the Café.

19 I'll take you there.

20 Was it on the second floor with Mr. Aloia and
21 Mr. Sciotto?

22 A. It was.

23 Q. Were they there before you got there?

24 A. I don't recall.

25 Q. Were you there with a check in your pocket?

1 A. I was not.

2 Q. And so when did you get the check?

3 A. After that meeting I drove straight home,
4 grabbed some documents that they had demanded and
5 went to the bank, got a cashier's check. I don't
6 recall whether I stopped at the police station before
7 or after going to the Café that they then took me
8 into a back room.

9 Q. So you got threatened?

10 A. Most certainly.

11 Q. Did you fear for your personal safety? Was
12 it a physical threat?

13 A. There was an element of that. They ushered
14 me up into some little corner joint, I'll call it, in
15 Brewerytown, like in an underdeveloped neighborhood
16 at the time in Philadelphia. They took me up into
17 the second floor, down a hallway and into what looked
18 like a conference room and they are both following
19 me. Then closed the door. I walked around the table
20 and sat there. It was the two of them as an imposing
21 situation.

22 Q. But you got up and drove to the bank?

23 A. No. That was not at the Café. It was later.

24 Q. I'm confused.

25 Was this on August 26th?

1 A. Yes.

2 Q. When did you first meet with them?

3 A. In the morning.

4 Q. Did you at that point have a check?

5 A. No.

6 Q. So later you brought a check?

7 A. As I said, I drove home, and I went to the
8 bank. Remember that part?

9 Q. Yes, excuse me. I'm older than you. My
10 memory is not as fresh.

11 At the morning meeting, were you threatened?

12 A. That's when I was threatened. That's when I
13 was threatened.

14 Q. You were threatened but not enough to driving
15 to the bank to get cash, right?

16 A. I didn't get cash. A cashier's check.

17 Q. A cashier's check.

18 It didn't keep you from driving to the bank,
19 correct?

20 A. It wasn't a physical threat at the time.

21 Q. But it was a psychological threat. You
22 thought they were going to sabotage you, defame you
23 and all of those elements were articulated at the
24 morning meeting, correct?

25 A. Said in no uncertain terms, if that's what

1 you mean by "articulate."

2 Q. Why didn't you drive to Ms. LaVan's office
3 and say, "These guys want \$53,000. What did can you
4 do to help me?"

5 A. She said, "Go to the police."

6 Q. When you went to the police, did they say
7 "Get the check"?

8 A. No.

9 Q. Why did you get the check? Why didn't you
10 just drive away?

11 A. They told me including in an E-mail while I
12 was doing this, in an E-mail from Thomas in which he
13 asked or he said, "In order to prevent criminal,
14 civil and other actions against you," I needed to do
15 this, which the payment that they requested wasn't
16 \$53,000. It wasn't a certain amount. They said to
17 give all the money in all my accounts. I figured I'm
18 going to make up some crazy number and just give it
19 to them, because I don't know what the heck is going
20 on there.

21 Q. They obviously thought they you had done
22 something wrong, right? They thought you had owed
23 them money because you had done something to them,
24 correct, or they wouldn't have asked for this, right?

25 A. They saw what I had brought to the

1 negotiating table. Opportunities walking out the
2 door.

3 Q. But again, you went and you got the cashier's
4 check and you handed it to them, right?

5 A. I handed it to Thomas specifically. Let's be
6 clear about that.

7 Q. Why didn't you cancel it later?

8 A. It was a cashier's check.

9 Q. You can't cancel a cashier's check, did you
10 know that?

11 A. No, I did not.

12 Q. Did you look into canceling a cashier's
13 check?

14 A. I always thought you couldn't cancel a
15 cashier's check, but at the same time Thomas was very
16 specific it had to be a cashier's check.

17 Q. Police told you it's a civil matter.

18 They weren't going to get involved?

19 A. At the time, they did.

20 Q. Did they ever press charges against my
21 clients or Decus?

22 A. The last meeting was Tuesday, so I don't
23 know.

24 Q. This past Tuesday? What did they tell you?

25 A. They were just asking questions before

1 Bill Hessert's deposition.

2 MS. LAVAN: Objection, hearsay.

3 THE COURT: No, overruled. That's not
4 hearsay.

5 BY MR. WATSON:

6 Q. You called the FBI on my client.

7 You did that a year or so ago, right?

8 A. No, I didn't call them a year or so ago.

9 Q. When did you contact the FBI about this
10 matter?

11 A. I don't recall if they were involved in a
12 conversation or what. I know I had to do a
13 significant amount of reporting on October 5th, when
14 my E-mail account was hacked into on my company
15 E-mail, and corporate accounts were hacked into. I
16 don't know. The detectives are at different points,
17 the detectives or FBI.

18 Q. We have to take your word, because there's no
19 paper that you produced that there's an open FBI
20 investigation against Decus, correct?

21 A. Not from the FBI. That would be a weird
22 thing to produce.

23 Q. Letters to you? You would have to produce
24 them in this unless they were confidential.

25 A. I don't have letters to me. Cherry Hill

1 Police Department has all the police reports that I
2 filed each one of these days that I would get these
3 threats. I would drive straight to the police
4 station and file a report, with the sole exception of
5 that one when I left with my head down because the
6 police said, "It's not our jurisdiction."

7 It happened in PA, not Cherry Hill, the town I
8 live in. They said, "It's not from our jurisdiction."

9 I was speaking to my attorneys, "And so where
10 do we go from here?" I was also trying to give them a
11 way to work their way out of it.

12 Q. You indicated that you gave them the \$53,000,
13 but yet they are still looking for money, correct?
14 That was your previous testimony?

15 A. It seems that way.

16 Q. Did you receive anything back from Decus or
17 Decus Construction that says, "We release you from
18 all claims because of the payment of this money"?

19 A. I never received anything of value from
20 Decus.

21 Q. Why didn't you ask for a release, if you
22 thought that's all you owed them?

23 A. Ask for a release when you're being extorted?

24 Q. You don't have the release, correct? You
25 didn't ask for one.

1 A. No, I don't.

2 Q. Let's go to --

3 A. They didn't send me an invoice either.

4 Q. I'm going to give you an exhibit, sir. Go to
5 Exhibit 110.

6 A. (Witness complies.)

7 Q. Now, Mr. Heenan, this is the construction
8 lien that my clients filed against a property, right?
9 Can you just show us where it is? It's the
10 Gloucester Data Center.

11 Do you see it here in the amount of \$128,137,
12 correct?

13 A. I've seen it many times.

14 Q. The owner is where? No, we need South
15 Jersey. We need the contract for South Jersey. This
16 is the lien against Southern Jersey CML's interest in
17 that property, correct?

18 A. Yes.

19 Q. For \$187,000, correct?

20 A. Yes.

21 Q. Was that \$187,000 paid to you? You testified
22 at your deposition that that was all paid.

23 A. There were actually change orders on the
24 project that Decus didn't know because Decus didn't
25 do the project.

1 Q. How much was paid?

2 A. I believe \$213,000.

3 Q. Did you give any of that to Decus?

4 A. No. They didn't do anything.

5 Q. So the lien is against Southern Jersey CML,
6 correct? You are saying that this lien is one of the
7 things that impacted your relationship with that
8 company, correct?

9 A. I think the lien is attached to the property,
10 the block and lot. Are you trying to mischaracterize
11 the --

12 Q. No, you're absolutely right. The lien is
13 against the property. It says Southern Jersey CML,
14 correct?

15 A. Yes.

16 Q. Who is Southern Jersey CML?

17 A. It's an LLC that I formed at about that exact
18 time. It is what became Central Jersey CML LLC,
19 which I gave you.

20 Q. There's a contract here between Southern
21 Jersey CML, correct? Between Southern Jersey CML --
22 I'm sorry, we're at 66 -- Southern Jersey CML and
23 Decus Construction, Inc., correct?

24 A. Sixty-six?

25 Q. Yes.

1 A. Yes.

2 Q. Southern Jersey CML is your company, correct?

3 A. I hadn't formed it at that point. It was
4 actually a typo initially. This is exactly when we
5 were forming the Central Jersey CML LLC, the
6 co-developer of mine told me -- communications
7 related to this, right then, late at night, created
8 the wrong one.

9 Q. Yes or no, was it a typo?

10 A. It most certainly was at the time.

11 Q. When did you find out?

12 A. That it was a typo?

13 Q. Yes.

14 A. I believe it was late on August 5th. I
15 believe it may have been very late at night. I was
16 working there late at night on the Central Jersey
17 CML, LLC. I don't recall when that entity was
18 created. Late then or early the next morning, I
19 believe.

20 Q. Here is the signature page, sir.

21 You're signing this on behalf of Decus, right?
22 I'm sorry, Decus Construction, that's your signature,
23 correct?

24 A. That appears to be my signature.

25 Q. You're signing on behalf of Decus

1 Construction, correct?

2 A. Yes. As I said, prior to August 1st, I
3 believe I was an owner in Decus Construction, and it
4 was sent most likely on the date listed at the top of
5 the contract, if you want to look at that, July 7th,
6 '16. I signed it for Decus Construction.

7 Q. This is what I'm asking now.

8 This is your signature, correct?

9 A. That is my signature. It appears to be.

10 Q. Did you sign it on or about August 4th?

11 A. No.

12 Q. When did you sign it?

13 A. I would have signed it on or about July 7th
14 of 2016. It was sent to the owner.

15 Q. This is Southern Jersey CML, LLC. This is a
16 certificate of formation.

17 If you scroll down it says it's registered
18 agent is Mark Heenan?

19 A. Yes.

20 Q. That's you, correct?

21 A. It is.

22 Q. So Decus is who you are representing as a
23 principal signing a contract with your company,
24 Southern Jersey CML?

25 A. No.

1 Q. I'm sorry, Southern jersey CML, LLC.

2 Explain that for the jury.

3 A. That contract had been terminated. The owner
4 tore it up because of my conversations with the
5 owner. He tore up that document after scanning it
6 and sending it to me. He tore it up because he
7 didn't want to deal --

8 Q. Anybody ever tell you that you're
9 unbelievable, Mr. Heenan, that you're not
10 trustworthy, that you don't tell the truth? Has
11 anybody ever told you that?

12 A. Just these guys, really.

13 Q. Really?

14 MR. WATSON: No further questions.

15 THE COURT: Ms. LaVan, do you wish to
16 recross based on that scope?

17 MS. LAVAN: No, Your Honor.

18 THE COURT: You may take down the Exhibit.

19 And, sir, you are finished with your testimony.
20 Thank you. You are excused for the remainder of the
21 trial. Of course, you may remain in the courtroom.

22 Mr. Watson, would you like to adduce additional
23 evidence?

24 MR. WATSON: We would call Mr. Thomas
25 Aloia.

1 THOMAS ALOIA, was duly sworn.

2 DIRECT EXAMINATION

3 BY MR. WATSON:

4 Q. Tell me your full name for the record.

5 A. Thomas Aloia.

6 Q. Can you just give the jury, if you will, a
7 brief sketch of your education post high school?

8 A. I went to Philadelphia University, which is
9 now Jefferson, for my Bachelor's of Architecture from
10 '97 to 2002. I worked for Cushman & Wakefield as a
11 project manager, and I was in Manhattan for five and
12 a half years before I started my own company. That
13 was a general contracting company.

14 I became a union carpenter while I had that
15 company. Started that from about three employees, grew
16 it to 200 employees. In about 2009 we suffered so many
17 losses from the downturn in the economy that I closed
18 the business. I went and worked for another
19 construction company as a senior vice-president for
20 about three years before joining John Sciotto with
21 Decus.

22 Q. You look awfully young.

23 How old are you?

24 A. Old.

25 Q. How old are you?

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1 A. Thirty-eight.

2 Q. That's a lot of work history in a short
3 amount of time.

4 How do you account for that?

5 A. I mean, I also grew up in the industry, just
6 a little different background. I was more design
7 oriented. I had a lot of student loans and got into
8 construction.

9 Q. How did you get involved with Decus?

10 A. I was doing a subdivision out in Newtown
11 Square. We were re-cladding about 150 homes, and I
12 had met a gentleman that was working with John
13 Sciotto named Lou Seca. Lou was the owner's
14 representative for the project. We were the
15 contractor for that project, and I began talking to
16 him.

17 He expressed an interest in me coming to join
18 Decus. I explained to him that I was risk adverse. I
19 had gone through the downturn of the economy and really
20 did not want to get involved in large construction and
21 wanted to reduce my risks. I was married and didn't
22 want to go through what I went through in '09

23 Q. You did have to file bankruptcy?

24 A. I did, yes.

25 Q. That was tough?

1 A. It was very tough. I lost almost everything
2 I had.

3 Q. When did you first meet Mr. Sciotto?

4 A. It would have been in probably the end of
5 2014, November of 2014.

6 Q. What was the purpose of that meeting?

7 A. Just kind of a meet and greet, get to know
8 each other. I brought a friend who happens to be a
9 judge. He's a good mentor to me, helped me through
10 some tough times. I told him I had an opportunity.
11 I wanted to kind of bring him with me to kind of feel
12 it out. It was myself, the judge, Lou Seca and John
13 Sciotto. We grabbed a beer, and just chatted about
14 what was going on in Decus, what projects they had,
15 what the schedule of events were and where I might
16 fit in.

17 Q. Were you aware of the reputation of Decus,
18 Inc. at that point in time?

19 A. I knew a little bit about it from Lou. Lou
20 is an accomplished -- I guess he's a Lieutenant
21 Colonel in the military. Great resumé. He worked
22 with John for about 15 years. I trusted him a lot.
23 I went with his recommendations to at least meet
24 John.

25 Q. Did you vet Decus?

1 A. I did.

2 Q. How did you do that?

3 A. I met John at some of the projects they had
4 going on. We toured those projects. I got to see
5 firsthand some of the staff members. I met with the
6 controller of the company, briefly went through the
7 books, and John was pretty much an open book. He
8 gave me the company financials, told me where the
9 company was strong, where it was weak. We reviewed
10 the staff, and then just some of the upcoming
11 projects that Decus had an opportunity at.

12 Q. When did you first come on board with Decus?

13 A. It was February 2015.

14 Q. What was that role, what was your title, what
15 was your interest in Decus?

16 A. I came in as a partner.

17 Q. Was that an owner?

18 A. Yes, 50-percent shareholder.

19 Q. What were your responsibilities?

20 A. I was going to take over the operations side
21 of the business. John was going to run the
22 estimating and preconstruction side.

23 Q. Who was doing the marketing?

24 A. John had actually done a very good job of
25 doing marketing. At that point, we had a backlog of

1 work so we didn't really need to do any marketing.
2 You always need to do marketing, but we had some
3 projects in the pipeline with data centers, and there
4 was good opportunity there, so I thought it would be
5 kind of take it easy and clean up the company and get
6 it a little more stronger on the operations side.

7 Q. Did you have any responsibilities with regard
8 to the Decus mark?

9 A. I did. There was an existing mark of the
10 company. I believe it was a "D" with a very similar
11 color scheme. John and I had sat down. He explained
12 to me the background of why he chose Decus, what the
13 Latin term meant.

14 THE COURT: I need an exhibit.

15 MR. WATSON: Exhibit 80, Your Honor,
16 Page 1153.

17 THE COURT: No problem. I just wanted to
18 know what exhibit it was.

19 BY MR. WATSON:

20 Q. You were saying the Latin term for Decus,
21 what does it mean?

22 A. It stood for pride, integrity.

23 Q. Pride and integrity?

24 A. Correct.

25 Q. So you designed this logo.

1 What was the logo before?

2 A. It was a "D" with a -- John had -- John
3 Sciotto is the head coach over at Temple, and I guess
4 one of his players had helped him with some logos.

5 Q. How did you go about developing this logo,
6 this mark?

7 A. John and I talked about it. We talked a
8 little bit about the marketing side of things that
9 Decus, Inc. from the standpoint it didn't read well
10 from a construction standpoint. When John started,
11 it was really a consulting company. It was to move
12 it from consulting and estimating to more of a
13 general contracting company, which he had created.
14 So we thought that a mark, redesign of the mark would
15 fit that.

16 Q. Let's go to Exhibit 113, if you will.

17 Who is Avery Blue?

18 A. Avery Blue is a graphic designer that we
19 engaged to take the logo from kind of preliminary
20 thoughts to a final version, a digital format.

21 Q. We'll talk while she's pulling up the
22 exhibits.

23 So what was your interaction? How did you go
24 about preparing the logo or utilizing her services to
25 prepare the logo?

1 A. I met with the company she worked for, Speak
2 Easy. I met with the principal. We talked about the
3 process and what was involved in creating an overall
4 brand. We talked about colors and the strengths and
5 weaknesses of those colors. We talked about the
6 existing logo, and then creating an overall
7 letterhead package as you called it.

8 Q. Did anybody else have anything to do with
9 preparing that logo?

10 A. I mean, John had some involvement in it.
11 John felt strongly about the original logo. It took
12 a little convincing to explain to him what some of
13 the changes were.

14 Q. Was it registered with the trademark office?

15 A. It was.

16 Q. After you used it, did you give anybody else
17 permission to use that trademark?

18 A. The entire staff had access to that. It goes
19 out on all the letterhead, our envelopes, our
20 business cards. It's our mark. It's on our hard
21 hats.

22 Q. We heard a lot of testimony from Mr. Heenan
23 about the fact that he was communicating with you
24 guys about the Decus logo, that he was communicating
25 with other outside entities with the Decus logo.

1 Was that permitted?

2 A. He was allowed to use it for company
3 business, of course. We wanted our brand on our
4 company and our work product.

5 MR. WATSON: Your Honor, I misspoke. This
6 is Exhibit 13. I apologize.

7 BY MR. WATSON:

8 Q. So this is your E-mail communication in
9 evidence in June of '15 where you are going back and
10 forth on items for the logo, correct?

11 A. Correct.

12 Q. I won't bore the jury with the details.

13 This proves the fact that you had
14 communications with her, correct?

15 A. That is correct, yes.

16 THE COURT: Who is the "her"?

17 BY MR. WATSON:

18 Q. Is Avery a her?

19 A. Yes, Avery is a her.

20 Q. How did you first come to meet Mr. Heenan?

21 A. John had mentioned him to me, that he was on
22 old colleague of his that he had met up with. He
23 just said that he kind of called him out of the blue
24 and asked if I could sit down with him and have a
25 conversation with him, that he had some opportunities

1 that he would like to bring over with Decus to see if
2 they were real.

3 Q. When did you first meet with him?

4 A. I believe my first meeting with Mark was the
5 first week of November.

6 Q. Why were you guys meeting with people? Why
7 were you looking to bring people on?

8 A. At that point, we had vetted our staff. We
9 tightened up the books, and we felt that we completed
10 enough work that we should start looking for some new
11 work. I had been involved in the company for almost
12 eight months at that point. It seemed like a good
13 idea for some projects that had six to 12-month lead
14 times on them.

15 Q. Mr. Heenan talked about the need to access or
16 to market or work across the bridge.

17 Was that part of the reason to utilize him
18 perhaps or somebody across the bridge to develop New
19 Jersey work?

20 A. We were already a registered foreign business
21 in New Jersey. We had work underway in New Jersey
22 already. The reality is that we work in New Jersey,
23 Pennsylvania and Delaware.

24 Q. You didn't need Heenan to do that?

25 A. We did not.

1 Q. Exhibit 5, can you tell me what this is?

2 A. It looks like the first page of Mark Heenan's
3 resumé.

4 Q. Was this provided to you when before you
5 interviewed Mr. Heenan?

6 A. I got a copy of that, yes.

7 Q. Slow down. Core accomplishments. It says he
8 co-founded, managed and grew business to \$53 million
9 in 2015 revenue. There's references to \$100 million
10 in work increasing profits 200 percent annually.

11 What did that mean to you? What did this
12 information mean to you?

13 A. I mean, some of it was troubling because of
14 the dollar amounts. Again, both John and I were a
15 little risk averse. We did 42 million from 2015 to
16 2017. Those were big projects, so I wanted to get a
17 clear understanding of what happened on those
18 projects, how they went and if they were -- we didn't
19 want to walk into headaches.

20 Q. How did you address those concerns?

21 A. Mark's resumé was a multipage resumé, so it
22 was a little different than your standard two-page
23 resumé that you receive from new applicants. I was
24 able to go through it with him in detail. Mark
25 walked me through his roles. He explained that he

1 was the president of the Hessert companies.

2 Q. Co-founder and president, correct?

3 A. Correct. On a quick review of their website,
4 it shows those projects. Mark walked me through
5 those projects as well, and it seemed like he had a
6 really good understanding of what was going on with
7 those projects, schedules and the difference between
8 a baseline schedule versus a work schedule.

9 Q. Back up a little bit, please.

10 These are the projects that he had listed,
11 correct?

12 A. Yes, I believe those match up with the
13 resumé. There's a description on a bunch of probably
14 about 20 key projects.

15 Q. How many are there here? Actually, there's
16 47 here, but this was provided to you, correct?

17 A. Correct.

18 Q. You talked to him about those projects?

19 A. We went through the overall list. I don't
20 think we went through every single project.

21 Q. What did he tell you his role was with regard
22 to these projects?

23 A. Very similar to his testimony. That he was
24 the president. He managed a staff of between 25 and
25 40 employees, including project managers,

1 superintendents to administrative staff. That he was
2 the end-all for all of those projects.

3 Q. Well, what did that mean to you at the time?

4 A. I was impressed. I mean, I worked pretty
5 hard to have the resumé I have, and Mark seemed to
6 have 47 projects that were all high dollars and there
7 were no issues with them.

8 Q. Did you hire Mr. Heenan in reliance on his
9 representation, this document?

10 A. Coupled with the new business that he talked
11 about.

12 Q. Tell me about the new business.

13 What was the new business?

14 A. Mark had a difference of opinion with his
15 uncle. He thought it was time that he left the
16 family company and went more to a younger
17 construction company where he could take his
18 \$100 million worth of projects and grow it and grow
19 maybe into a Gilbane or InTech, which are -- just a
20 reference for those, they are two of the largest
21 construction companies in Pennsylvania. They are
22 probably one of the top five.

23 Q. This was exciting.

24 It was a good opportunity?

25 A. It was a good opportunity.

1 Q. But did you feel as though you rushed into
2 it?

3 A. We weren't taking on \$100 million worth of
4 projects. We tread lightly on some of those. It
5 also comes down to being able to fund those projects.
6 We had to see which projects were in our wheel house
7 and which did not.

8 Q. When did you decide to move forward with
9 Mr. Heenan as a part of the company, and what was
10 that role?

11 A. Mark had to clean up some work, a product
12 with his uncle. He was kind of winding down the
13 company, as he explained it to us. Winding down the
14 company, he wasn't going to be available full time.
15 He came up with a \$750 a week, more like a weekly
16 salary, that he was going to commit two to 20 to 25
17 hours a week growing the business.

18 John asked for a little bit of help on the
19 Brewerytown project. That didn't last long because we
20 found out that wasn't Mark's strong suit. We found out
21 he could help with the punch list on closing out some of
22 the floors using a BIM modeling system.

23 Q. What is BIM?

24 A. It's a Building & Management System.

25 Q. Computer-assisted construction design?

1 A. You create a 3D model to create anything on a
2 project, whether it's a construction delay, a punch
3 list item, a change directive, anything that you
4 could possibly think of on a project. You have a 3D
5 model to identify it to a client.

6 Q. Thank you. Go ahead.

7 A. But his real role was going to be business
8 development. That's his strong suit. He's kind of a
9 slick talker. He's quick. John and I kind of both
10 are spreadsheet oriented, and we kind of like our
11 deduction in a row. Mark is a free spirit and a good
12 fit for business development.

13 Q. What were the terms of the agreement with
14 Mark Heenan, and when did you enter into that
15 agreement?

16 A. The terms would have been \$750 a week for the
17 weeks he was working for us. He was going to be away
18 at some points, and then he would receive a
19 20-percent necessity profit of the projects he
20 brought in.

21 Q. 20 percent?

22 A. Necessity profit.

23 Q. So all of these projects that he had
24 testified on cross or on redirect, I guess, where he
25 said he would have gotten profits on those, right,

1 had they been your projects, you would have gotten
2 the profit, you would have given him 20 percent of
3 that if he was under the consulting agreement?

4 A. Under the consulting agreement, it really
5 only related to projects he brought in, or that he
6 was directly involved in. We had some significant
7 projects at the time that we wouldn't have given him
8 20-percent necessity profit on those projects because
9 he wasn't involved in them.

10 Q. Was it a handshake agreement?

11 A. Yes, it was. We had followed up. The three
12 of us went and had dinner at a restaurant in East
13 Falls called In Riva. We went through some of the
14 terms of what we were looking for and what his time
15 commitments would be and how we would move forward
16 from there.

17 Q. At that point, did you discuss ownership with
18 him?

19 A. I don't recall that we talked about ownership
20 at that point. We might have touched upon it. I do
21 know that we weren't looking for another partner. At
22 this point, we really just wanted to bring in
23 business and get to know the guy.

24 Q. At some point, though, he did want to have a
25 conversation about ownership, did he not?

1 A. He did. Mark wanted to have a conversation
2 about ownership early on. In February, I set forth a
3 written agreement understanding a business
4 relationship model for him. It was just a two or
5 three-page agreement that never got signed.

6 Q. Go to Exhibit 27. This is a November 24th
7 E-mail from Mr. Heenan to John and you. It is called
8 Proposed Profit Sharing Structure.

9 Is this the E-mail that you referred to where
10 you laid out some terms?

11 A. This is an E-mail from Mark with his
12 thoughts. As he stated, it was high level based on
13 his thoughts.

14 Q. November 24th, how close in time to that was
15 it when you hired him?

16 A. About two weeks afterward.

17 Q. He's saying that he'd like to explore a
18 partnership further, correct?

19 A. Correct.

20 Q. Had you guys promised him a partnership?

21 A. No.

22 Q. Had you promised him ownership?

23 A. No.

24 Q. Had you promised him a membership in an LLC?

25 A. No.

1 Q. He said he would like to perfect the
2 following goals by year's end, develop a company
3 profile, which included a website, LinkedIn, et
4 cetera.

5 Was he in charge of developing a website?

6 A. He was.

7 Q. Did he create the website?

8 A. He did.

9 Q. Were you involved in that?

10 A. I did not have really any involvement in the
11 website. Mark spearheaded that project up, and that
12 was his baby. That's what he worked on the most.

13 Q. Then he talks about some financial goals and
14 then trying to develop some backlog. Here are the
15 terms.

16 The 1,500 a week, what was that representative
17 of? I thought it was \$750 a week.

18 A. That was something Mark proposed, and we
19 rejected it.

20 Q. He wanted profit sharing of 30 percent.

21 Did you give him that?

22 A. No.

23 Q. Those were Mark's thoughts?

24 A. Yes.

25 Q. He says, "This is just a first stab, high

1 level based on my thoughts," correct?

2 A. Correct.

3 Q. At some point in time, did you ask Mr. Heenan
4 why he left Hessert?

5 A. I did.

6 Q. Did you come to find out why he left Hessert?

7 A. I have through this litigation, yes.

8 Q. What did you learn?

9 A. I learned that he was terminated by
10 Bill Hessert. There were obviously some issues
11 surrounding that termination. Of those facts, I
12 haven't vetted them, but just what Mr. Hessert has
13 related to us and what's in the Court filings.

14 Q. Right. What in general?

15 A. The main issue was that there was a potty cam
16 installed by Mark Heenan in the unisex bathroom in
17 their office. There were also some issues with some
18 cyberpiracy cloning the company's website. There was
19 theft of money. There was a residential project at
20 Mark's house that he said he was using allocated
21 funds for other projects to fund.

22 Q. What did Mark tell you was the reason why he
23 left Heenan?

24 A. He left on his own terms. He said his uncle
25 was virtually retiring, and he had a book of business

1 that he wanted to build.

2 Q. Do you think Mark lied to you?

3 A. I do.

4 Q. Had you known about the potty cam and the
5 other issues, would you have hired him?

6 A. I would not have.

7 MR. WATSON: Can you pull up Exhibit 27?
8 107.

9 BY MR. WATSON:

10 Q. This, Mr. Aloia, appears to be an E-mail from
11 you to Mr. Hessert with a copy to John. I'm going to
12 let you read it.

13 Do you want to turn to 107, or can you see it
14 from there?

15 A. "Bill. As follow-up to our earlier
16 conversation, listed below is a short list of
17 projects that Mark represented to Decus were
18 completed under his supervision management execution.
19 A short blurb on each project listed would help
20 distinguish fact from fiction. Appreciate your
21 continued assistance. Best, Thomas."

22 Q. I'm jumping forward about a year, correct?

23 A. Correct.

24 Q. About a year later, you happened to reach
25 back to Mr. Hessert.

1 What caused you to do that?

2 A. Mr. Hessert reached out to me. I believe it
3 was from, I think Number 2 in his company, a Victor
4 Lombardi who knew our website designer, the one that
5 Mark had worked with. Mr. Hessert worked out with me
6 and asked me some questions.

7 At first I did not respond to him, and then
8 after this litigation had started I did reach out to him
9 and we had a conversation right before this E-mail was
10 sent out.

11 Q. We're going to get into this with
12 Mr. Hessert's testimony later in the trial, but I
13 just wanted to establish that this is what you sent
14 to him.

15 Why did you send this to him?

16 A. I sent that to him. When he reached out to
17 me, he had explained that our website was set up
18 almost identical to his website, and a lot of what he
19 was reading was almost a clone of his work for a
20 lifetime. And I was --

21 THE COURT: Whose work?

22 THE WITNESS: Mr. Hessert.

23 THE COURT: Mr. Hessert's work?

24 THE WITNESS: Yes.

25

1 BY MR. WATSON:

2 Q. That caused you concerns?

3 A. It did.

4 Q. Why?

5 A. Some of them are both John and my projects.
6 There are 47 projects on that list that are Mark's
7 projects that he represented in his resumé.

8 Bill had quickly gone through and gave me some
9 quick accounting. He never responded to my E-mail.
10 Never wanted to put anything in writing. I only saw
11 this document two days ago. I hadn't gone through it.
12 But I believe he sent some accounting of these projects
13 as well of what Mark's involvement was.

14 Q. Was the purpose to see if Mark had, in fact,
15 managed these projects?

16 A. It was. I wanted to get some more details on
17 these projects, because everything we were hearing
18 and experiencing was virtually a lie.

19 Q. He didn't send this back to you, though?

20 A. He did not.

21 Q. Mr. Hessert will explain that later.

22 Did you enter into negotiations with Mr. Heenan
23 regarding his coming on board, as you guys call it, as a
24 partner but owner of Decus?

25 A. Correct.

1 Q. It wasn't to be a partner, but a corporation
2 or an LLC?

3 A. Yes.

4 Q. Why did you start negotiating with him and
5 when?

6 A. I believe it was shortly after. It might
7 have been April is when the first -- I think we had
8 pulled out a boilerplate shareholders agreement that
9 I think had some open terms about purchasing shares,
10 and passed it around for comment.

11 Q. What did you have in your mind with regard to
12 bringing him on board? I'm sorry, did I ask you,
13 when was it?

14 A. I believe it was April.

15 Q. Of?

16 A. 2016.

17 Q. You were happy enough with his performance at
18 that point in time that you were going to bring him
19 on board possibly as an owner?

20 A. We had some concerns around the receivables
21 not coming into the company. We hadn't been paid for
22 any preconstruction work at that point, but it was
23 small dollars. We figured if we could move in the
24 right direction of a partnership and Mark had offered
25 to a buy-in and the buy-in was -- there was no set

1 dollar amount. I think, first, we threw in a couple
2 numbers, but the idea was to raise some capital and
3 go after some of the energy projects.

4 Q. This is Exhibit 48. I think Mr. Heenan had
5 testified to this. This is in February of '16.

6 MR. WATSON: If you can scroll up, please.

7 BY MR. WATSON:

8 Q. This is from Decus.

9 Did you author this letter?

10 A. I did, yes.

11 Q. This letter was for what purpose?

12 A. This was to create some sort of agreement
13 between us.

14 Q. A Memorandum of Understanding?

15 A. I think that's what it's called at the top of
16 the page. It's a formation of business relationship.

17 Q. This was for Decus, Inc.?

18 A. No, Decus Construction, Inc.

19 Q. Explain that.

20 A. John and I, we didn't want to bring anyone
21 into Decus, Inc. because we were going to create that
22 as a holding company, and that was ultimately going
23 to hold all the assets of whatever company structure
24 that we created.

25 We thought about creating a construction arm, a

1 real estate arm, and that was where we stopped. So we
2 were breaking it down into construction at first, and we
3 created Decus Construction, Inc. That was part of our
4 business model to just clean it up, and we wanted to
5 have a clean working slate of just a company that did
6 construction.

7 THE COURT: Let's take five minutes to let
8 the jury stretch their legs.

9 We'll take five to ten minutes to stretch your
10 legs. We're going to go to 5:00.

11 (The jury exited the courtroom at 4:00 p.m.)

12 (The Court resumed the proceedings at
13 4:15 p.m.)

14 THE COURT: Ladies and gentlemen, these
15 extensions are not in any way caused by the lawyers.
16 Once I get back there, people get me on the phone. I
17 had to handle another emergency call so I apologize to
18 you. I slowed you down by about ten minutes.

19 Please proceed, counsel.

20 MR. WATSON: Let's pull up Exhibit 74.

21 BY MR. WATSON:

22 Q. If you could turn to 74, Mr. Aloia, and
23 describe this E-mail chain from you to Mr. Heenan
24 with copies to John.

25 What's the purpose of these communications?

1 We'll focus on that page.

2 A. Well, the overall --

3 THE COURT: Exhibit number, I'm sorry?

4 MR. WATSON: Seventy-four.

5 THE WITNESS: The subject matter was the
6 Bellmawr Dunkin' Donuts. The overall E-mail talks about
7 open issues, talks about projects, talks about
8 certificates of insurance for those projects. There's
9 Page 1104 that talks about some of the work, it's
10 unorthodox, executing work without prime contracts in
11 place.

12 BY MR. WATSON:

13 Q. Are you looking at 74?

14 A. Yes, Page 1104.

15 Q. Page 1102, Tom. This is Page 1102.

16 A. 1102 is an E-mail from myself to both Mark
17 and carbon copied to John Sciotto, "High Importance."
18 It talks about the general housekeeping of open
19 matters. "We should sit down and discuss a final
20 draft and execute a partnership agreement."

21 It identifies the total shares available under
22 the company and who would be getting what shares and
23 why. There are 100 shares going to me, 100 shares to
24 John and zero to Mark. The equity is split. It breaks
25 it out on that as well. And then it talks about

1 percentages of profit.

2 Q. Did you ever enter into a written agreement
3 with Mark Heenan for him to acquire ownership in
4 Decus Construction or Decus, Inc.?

5 A. We have not entered into any written executed
6 agreements with Mr. Heenan.

7 Q. Did you ever believe he was a partner or a
8 shareholder or a member of Decus Construction or
9 Decus, Inc.?

10 A. No.

11 Q. When did you first learn that Mr. Heenan was
12 stealing your business?

13 A. I believe it was late August, August 26th.

14 Q. How did that come about?

15 A. We met on a regular basis at a coffee shop
16 right off of Henry Avenue in Philadelphia, usually on
17 a Monday, just to talk about projects and what Mark
18 was working on and how they were proceeding.

19 I was a few minutes late. When I got there,
20 John had really kind of a grimace on his face, and he
21 wanted Mark to explain to me what was transpiring on
22 these projects and where the money was going because we
23 kept asking "Where are the funds going on these
24 projects?"

25 And Mark had explained that he created a dba,

1 doing business as Decus Construction under Heenan
2 Holdings in New Jersey, and he did it to protect us, is
3 how he explained it, and that he had collected several
4 hundreds of thousands of dollars on those projects.
5 Started going through everything.

6 Q. He told you this on August 26th for the first
7 time?

8 A. For the first time, yes.

9 Q. What alerted you to that, the fact that you
10 hadn't been receiving cash?

11 A. We hadn't received any payments. I reached
12 out to the owners on South Jersey CML and I CC'd John
13 and Mark on correspondence to Alex McCourt, and asked
14 where the payment was. The bookkeeper or admin from
15 their office had written back saying that three
16 checks had already been cut. Mark had replied to
17 that E-mail stating that he had had the checks and
18 just hadn't gotten to the office yet, but he would be
19 dropping them off today. Not to worry.

20 Q. What happened on August 26th, in that coffee
21 shop?

22 A. I think there was a lot of anger. A bit of
23 hurt. John was pretty upset. I actually took John
24 outside to talk to him. I told Mark to give him a
25 few minutes. John and I discussed our options as to

1 what we could do, what was the best for the company
2 and there was a level of embarrassment as well with
3 it. We talked about how not to let this thing get
4 blown into litigation. My recommendation was to go
5 back in, talk to Mark and figure out a solution that
6 works for all of us. At the end of the day, we all
7 go to work to make money.

8 This is what this was about. So there's got to
9 be a work around for it, and how do we get to that?

10 Q. Who told you that he was cashing checks for
11 Decus?

12 A. At that point, he had told us that he had
13 collected the checks and didn't say he deposited them
14 yet. What he told us is that he was still holding on
15 to them, and he was basically holding them hostage
16 until he got paperwork for partnership.

17 Q. Did you ask him to actually let you see the
18 checks?

19 A. We did.

20 Q. Let's look at this first.

21 This is a \$30,000 check, right --

22 A. Correct.

23 Q. -- from South Jersey CML. Not Southern, not
24 Mr. Heenan's company, but the real one, South Jersey
25 CML, correct?

1 A. Correct. We didn't actually pick that up
2 until the lien filing. There was a difference there.
3 We thought maybe it was a typo, maybe it was
4 something else, but the bigger issue for us was where
5 it says "Decus Construction."

6 Q. This is Decus Construction.

7 This is what Mark E-mailed to you?

8 A. I believe he took a picture of it and texted
9 it to John.

10 Q. The purpose was to do what?

11 A. To show us that he had the checks. What's
12 missing there is the address. That's what raised a
13 red flag for us, that the address was whited out.
14 Something was intentionally done to mislead us.

15 Q. What did you find out to be on these checks?

16 A. Mark's home address.

17 Q. Mark's home address. \$46,900 from South
18 Jersey CML payable to Decus Construction with his
19 home address.

20 Who signed it?

21 A. That's Mark Heenan's address and undersigned
22 for Decus.

23 Q. Did he admit that?

24 A. I don't recall.

25 Q. What did you think when you found this out?

1 A. Well, we got these checks during this
2 litigation.

3 Q. For the first time?

4 A. For the first time.

5 Q. Let's go back to August 26th.

6 He had mentioned a morning and then an
7 afternoon meeting; was that true?

8 A. That's correct, yes.

9 Q. What happened in the morning?

10 A. In the morning we had, as I said, met with
11 Mark. We heard him out on everything that he had
12 done. He pled to John that he has a family and kids
13 and John's response in front of me was that, "It's
14 not Thomas that you need to talk off the ledge. It's
15 me. I am just livid about this because I have a
16 family as well, and you are basically taking food off
17 my kid's table."

18 We discussed a reasonable solution, and Mark
19 was going to be transparent with us. He was going to go
20 back and get us all of the paperwork on all these
21 projects. He was going to give us a list of liabilities
22 that he may have put us at risk with as far as
23 subcontractors.

24 He was going to give us a list of all
25 documentation, whether it be contracts, subcontract

1 agreements, lien releases, payments that were
2 purportedly made, correspondence with the owners. He
3 was going to close the dba, so we wouldn't have any
4 issues related to any further checks being collected.

5 Q. I'm going to hold you for a second, because I
6 need to do some housekeeping. Turn to 86. I just
7 need you to authenticate this document.

8 So the whited-out one, there are three of
9 these, right, on your page? One for 30,000.

10 What are the other two for?

11 A. \$25,023, and the last one is \$46,900.

12 Q. All payable to Decus Construction?

13 A. Correct. From South Jersey CML.

14 Q. Was Decus Construction created at this point
15 in time?

16 A. Yes.

17 Q. Decus Construction, Inc.?

18 A. Correct.

19 Q. What was Decus Construction, if you knew?

20 A. Both of them existed.

21 Q. Okay. All right, and then the second one was
22 what? Turn to 68, please.

23 Then 68 is what, Thomas?

24 A. Sixty-eight is a summary of --

25 Q. Next page, I'm sorry. Go to Page 779.

1 A. It just looks like another copy of the check,
2 except this time it's not whited out, and it shows
3 Mark's personal residence.

4 Q. It shows the signature of Mark, correct?

5 A. Correct.

6 Q. Next page, 780, another check for \$28,023,
7 \$25,023 and no cents, again, payable to Decus
8 Construction at his Cherry Hill address endorsed by
9 Mark Heenan, correct?

10 A. Correct.

11 Q. Ditto for the next page, a \$30,000 check?

12 A. Correct.

13 Q. Ditto for the next page for a \$35,000 check,
14 correct?

15 A. Correct.

16 Q. Ditto for the next page for \$36,300 check,
17 correct?

18 A. Correct.

19 Q. Ditto for the next page for a \$44,109.20
20 check, correct?

21 A. Correct.

22 Q. I'm sorry. Go back.

23 So he gave you a list of the projects, correct?

24 A. Mark gave us a project status report on all
25 projects he was working for Decus Construction, Inc.

1 Q. Was this on August 26th?

2 A. This was several days afterwards.

3 Q. I want you to focus on August 26th, because
4 he had talked about coercion, harassment -- not
5 harassment -- coercion. I want you to focus what
6 happened in your mind, and what did you tell him?
7 What were your words, what were your actions?

8 A. Well, I was disappointed, and my actions were
9 really just "This doesn't need to go the wrong
10 direction here, Mark. This is not too far gone. If
11 everybody just kind of gets on the same page and
12 you're honest with us, there's a work around here."

13 I did make the comment of "The last thing I
14 think you want is to have your picture in the local
15 newspaper with some sort of charges against you."

16 I said, "I don't know where this will go or if
17 it would be to the police or the DA, but I don't think
18 we need to go down that route yet."

19 Q. Did you tell Mark "If you don't bring me a
20 check, I'm going to call the cops"?

21 A. No.

22 Q. What about the issue with the website that
23 you were going to publish, or he said you threatened
24 to publish?

25 A. No, there's no threat of -- I mean, the

1 threats that were made were real. We had been
2 defrauded, and we felt we're not lawyers. We don't
3 know what we can do. So we told him. You know, "We
4 know we can go to our attorney. We know we can go to
5 probably the police on this, but we don't want to."

6 We tried to deal with him directly, just John
7 and I.

8 Q. Did you say you were going to set up a
9 website? What was the context of that conversation?

10 A. I was not going to set up a website.

11 Q. What did you tell him?

12 A. What I just explained to you. That I
13 wouldn't want to see his picture, which there's an
14 article or a blurb in the South Jersey Magazine of
15 him, "Top Under 30," I believe it was.

16 I said, "You don't want to tarnish that. It's
17 an accomplishment, and this wouldn't look well against
18 that."

19 Q. Did you say "If you don't give us the money,
20 I'm going to publish a website with defamatory
21 comments"?

22 A. No.

23 Q. Any physical threats?

24 A. No.

25 Q. Did he threaten you?

1 A. No. Mark just kept telling us that he was
2 going to get us whatever we needed to get back on
3 track. He just needed to go back and get some
4 paperwork done. He was going to do some accounting.
5 He was going to give us all the accounting on these
6 projects and where they were at.

7 Q. After that morning conversation, did he
8 leave?

9 A. We all walked outside. We shook hands and
10 said we'd reconvene in a couple hours after Mark had
11 the paperwork.

12 Q. Did you ask him to come back with a check?

13 A. Mark offered to come back with a check.

14 Q. What did he say?

15 A. He said he was going to go and figure out the
16 accounting and come back with a check for what he had
17 taken.

18 Q. All of these checks that we went through, you
19 would assume?

20 A. We didn't know the total amount. He was
21 going to give us an accounting.

22 Q. These checks. This is July 13th of 2016, and
23 it's been deposited, but you didn't know about this
24 check, correct?

25 A. I believe John knew about the three checks

1 that he had texted him. We didn't know anything
2 about the Gloucester Data Center.

3 Q. So you broke camp. He went to figure out a
4 plan, what he was going to pay you essentially,
5 correct?

6 A. Correct.

7 Q. He didn't say, "I'm not going to pay you"?

8 A. No, he did not say that.

9 Q. It was just a matter of how much?

10 A. Correct.

11 Q. When he came back with a check, what
12 happened?

13 A. We have a regular meeting spot up the street
14 from our one project. It's in a conference room on
15 the second floor of a local Café. It's typically a
16 for-rent conference room, and they always give it to
17 us whenever we need it.

18 John and I had been sitting in there. I was
19 eating my lunch. Mark came up and John had to leave and
20 go back to a job. Mark handed me the check. I believe
21 he might have placed it on table. John went back to the
22 project up the street.

23 Mark and I spoke for a few minutes. The
24 manager of the Café stopped in and said, "Hey, I
25 normally wouldn't care, but this is actually rented out.

1 Do you guys mind if you go out to the general area?"

2 We said no problem, and then we left.

3 Q. Mark said he was going to the police?

4 A. No.

5 Q. Did he say he was going to his attorney?

6 A. No.

7 Q. The level of discourse, did you think it
8 merited legal or police intervention?

9 A. No. We thought we were going to get the
10 paperwork we discussed. We actually followed up with
11 a couple E-mails. I believe I went back and wrote
12 him an E-mail on what we were looking for.

13 Q. When did you first find out he was signing
14 your contracts or substituting your names on
15 contracts?

16 A. We did not find that out until everything had
17 completely fallen apart with Mark.

18 Q. Explain that.

19 How did it all fall apart?

20 A. We never got the documentation in its
21 entirety. We got some pieces here and there, but we
22 didn't get everything that we had asked for. We
23 didn't even get a substantial bit of the paperwork.

24 I believe we had reached out to both clients.
25 South Jersey CML or Southern Jersey CML and the

1 Gloucester Data Center and wrote them E-mails, basically
2 where we were at on the accounting, and we hadn't been
3 paid.

4 Q. Go to Exhibit 66, if you will. Let's start
5 with 32.

6 Mr. Aloia, can you identify what document
7 Exhibit 32 is for the record?

8 A. This is a --

9 Q. Thomas, go to Exhibit 1, which is the
10 Complaint. Just flip to the upper right-hand corner,
11 22. This was Exhibit B in the Complaint that you
12 filed.

13 MS. LAVAN: Objection, Your Honor. Are we
14 able to use the Complaint?

15 THE COURT: What Exhibit Number is?

16 MR. WATSON: One.

17 THE COURT: You can't use your own
18 Complaint.

19 MR. WATSON: Just the Exhibit.

20 THE COURT: All right.

21 BY MR. WATSON:

22 Q. What is this document?

23 THE COURT: Before you put it up, let me
24 see it. Don't publish it yet.

25 Exhibit 1, do you have it?

1 THE WITNESS: Page 22.

2 THE COURT: Thank you.

3 Do you know this document, sir?

4 THE WITNESS: I do.

5 THE COURT: What is it?

6 THE WITNESS: That is a copy of our
7 executed contract with the Gloucester Data Center LLC
8 owner.

9 THE COURT: Okay. That may be published,
10 not the complaint but the document.

11 MR. WATSON: For the record, we're going to
12 limit the publication and the Exhibit to Pages 22
13 through 32.

14 THE COURT: Right.

15 BY MR. WATSON:

16 Q. Mr. Aloia, can you turn to Page 331 on this?

17 A. I'm here.

18 Q. This is the page, correct, that's been
19 published? Is this your signature?

20 A. That is my signature, correct.

21 Q. And John Sciotto's name is there, but it's
22 marked out there with yours printed?

23 A. Correct.

24 Q. Why is that?

25 A. Because I was signing on behalf of the

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1 company as one of the principals.

2 Q. Who witnessed or attested to that?

3 A. That is Mark Heenan's address.

4 Q. What does "attest" mean in your mind?

5 A. It means he witnessed me signing the
6 document.

7 Q. Was he authorized to sign contracts?

8 A. Mark was not authorized to sign contracts on
9 our behalf.

10 Q. Was he authorized to sign payment
11 applications?

12 A. No.

13 Q. Was he authorized to negotiate checks?

14 A. No.

15 Q. Now, let's go to Exhibit 34.

16 So you had a contract in hand for this project,
17 correct?

18 A. Correct.

19 Q. How did that happen? How did that come
20 about?

21 A. This was a client that Mark Heenan had
22 brought to Decus, Decus, Inc.

23 Q. Who did the work on the project?

24 A. It was collective. Mark had worked on it as
25 well as John, myself, and we had some consultants who

1 also worked on the project.

2 Q. What is this Exhibit 34, can you tell me?

3 A. This is the same exact document that we just
4 looked at, except on the signature page --

5 Q. The second page first, Page 607.

6 A. This is --

7 Q. This is 607?

8 A. Right. I'm looking at it. So this is a copy
9 of the second page of this agreement, which has the
10 parties. In this case, this one has Decus

11 Construction and Heenan Holdings LLC. Dba Decus
12 Construction is listed as the owner's representative.

13 Q. It has this Cherry Hill address that we saw
14 on the checks?

15 A. That's Mark's home address.

16 Q. Whose signature or whose initials?

17 A. I believe that's Mark Heenan's.

18 Q. Was he authorized to change the contract
19 information in this manner?

20 A. No, and I don't even think at this time that
21 dba existed.

22 Q. I see. We'll get to that.

23 THE COURT: What's "this time," sir? What
24 do you mean by "this time"?

25 MR. WATSON: Go to the last page --

1 THE COURT: Direct the jury where you're
2 talking about.

3 THE WITNESS: On this contract it's dated
4 the 22nd day of December in the year 2015. That dba
5 wasn't created until March of 2016, which would lead me
6 to believe that this contract was altered after he
7 created the dba.

8 BY MR. WATSON:

9 Q. So this is the signature page for that same
10 contract. Just explain what you see here.

11 This is where your signature had been before on
12 the other version, correct?

13 A. Correct.

14 Q. But then you're seeing what? It says,
15 "Owner's Representative Heenan Holdings LLC,"
16 correct?

17 A. Correct.

18 Q. It doesn't even mention Decus, correct? He
19 X'd that out?

20 A. He X'd that out of that.

21 Q. He marked out John's name and put his as a
22 principal, correct?

23 A. Correct.

24 Q. Is he authorized to do this?

25 A. No. These are the same identifying

1 signatures above the attest and owner's signatures
2 that were on our contract.

3 THE COURT: Does the original of this
4 contract have two signatures? I mean, do you have the
5 original with the signatures on it?

6 THE WITNESS: It's in the Complaint that we
7 just looked at. The original, original?

8 THE COURT: No, the original of this
9 exhibit that has Mr. Heenan's signature on it.

10 THE WITNESS: We don't have an original
11 copy. We have a copy that was supplied to us.

12 THE COURT: But you you've the original,
13 original, what you are claiming as the original,
14 original attached to the Complaint?

15 THE WITNESS: Correct.

16 THE COURT: But you don't have an original
17 of Mr. Heenan's signatures?

18 THE WITNESS: No.

19 BY MR. WATSON:

20 Q. How was this provided to you?

21 A. This was provided to us, I believe, late
22 October, November where Mark had written a
23 correspondence to the owners saying that we don't
24 have contracts and that Heenan Holdings has the two
25 contracts, both Gloucester and South Jersey CML.

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- 1 MS. LAVAN: What exhibit do you have there?
- 2 MR. WATSON: That is 34. I'm sorry, Your
- 3 Honor.
- 4 MS. LAVAN: Your Honor, this is Exhibit 54.
- 5 BY MR. WATSON:
- 6 Q. Mr. Aloia, can you turn to that in the book?
- 7 A. (Witness complies.)
- 8 Q. Mr. Aloia, what is this document?
- 9 A. This is the State of New Jersey Division of
- 10 Revenues Registration of an Alternate Name form.
- 11 Q. Did you acquire this?
- 12 A. I did.
- 13 Q. How did you acquire it?
- 14 A. I had contacted New Jersey Revenue
- 15 Department, and they directed me to their website
- 16 portal where I was able to review corporate documents
- 17 which are public record.
- 18 Q. This says it's filed March 11th, 2016,
- 19 correct?
- 20 A. Correct.
- 21 Q. The name of the company that's making this
- 22 filing is Heenan Holdings, correct?
- 23 A. Correct.
- 24 Q. Who did you understand owned that?
- 25 A. That would be Mark Heenan.

1 Q. Then scroll up, please.

2 Then it lists as an alternate name to be used
3 Decus Construction, correct?

4 A. Correct, and Mark's name is down at the
5 bottom.

6 Q. The signature is Mr. Heenan's signature?

7 A. Correct.

8 Q. That's on March 9th, 2016?

9 A. Correct.

10 Q. When did you first find out about this?

11 A. This would have been the end of August,
12 probably right after we left that meeting on the
13 26th.

14 Q. What did you think?

15 A. I didn't know what to think. I don't know to
16 the extent of the damage, or how this was going to
17 play out as far as clients and how it could be
18 explained. It could have put us in a tough spot.

19 Q. Did you confront Mr. Heenan?

20 A. I did.

21 Q. What did he say?

22 A. I actually told him as one of the
23 requirements to continuing to work together he would
24 have to dissolve that dba immediately.

25 Q. You still talked to him after this?

1 A. We did.

2 Q. Why?

3 A. We were trying to work it out.

4 Q. What was his response?

5 A. He was going to dissolve it. I believe
6 sometime after that meeting he did dissolve it, and
7 he sent us an E-mail confirmation.

8 Q. After he was found out?

9 A. After he was found out, yes.

10 Q. Let's go to Exhibit 66.

11 Mr. Aloia, what is Exhibit 66?

12 A. Sixty-six is another contract. It's another
13 consensusdoc to abide for small projects. This was a
14 contract between Decus Construction Inc. and Southern
15 Jersey CML.

16 Q. Did you know who Southern Jersey CML was?

17 A. I'm not sure because the project says "South
18 Jersey CML," and at the time we figured it was just a
19 typo. But this contract was a contract that Mark had
20 represented to us as the signed contract for the
21 South Jersey CML Project.

22 Q. I don't want to go back to the exhibit, but
23 you saw Mr. Heenan talk about the dba and his reasons
24 for setting up southern Jersey CML?

25 A. Correct.

1 Q. Did he ever tell you that?

2 A. He did not. To this day he has never
3 explained it to us, with the exception of his
4 testimony.

5 Q. The signature page, who signed this contract
6 with Southern Jersey CML?

7 A. It looks like the owner is listed as Alex
8 McCourt, who is listed as the business manager who
9 is, in fact, the South Jersey CML business manager.
10 I don't know his affiliation with Southern Jersey CML
11 and Mark Heenan signed for DEC's as principal.

12 Q. Was he authorized to sign?

13 A. He was not.

14 Q. Mr. Heenan mentioned this is a typo, and the
15 typo shows up here.

16 Yet it's signed by the owner, correct?

17 A. Correct. The business manager. I don't know
18 that he's the owner.

19 Q. Let's go to 76.

20 Page 1106, what is that document?

21 A. The other one was a consensusdoc, 205.

22 Q. And this is between whom and whom?

23 A. This contract is between South Jersey CML and
24 Heenan Holdings LLC, dba Decus Construction, at 709
25 Marlowe Road.

1 Q. He got the right owner this time, right?

2 A. He did.

3 Q. Yet he put his company in, correct?

4 A. Correct.

5 Q. Do you know why this was done?

6 MR. WATSON: Go to the signature page.

7 THE COURT: Did you answer, sir?

8 THE WITNESS: Not yet. Our belief was that
9 Mark was trying to --

10 MS. LAVAN: Objection, speculation.

11 THE COURT: Overruled.

12 I asked you, the question was, do you know why
13 he was here? It seemed like it was Mr. Heenan. Unless
14 he told you, you can't speculate as to what is in his
15 mind.

16 Did he tell you the reason why he did that?

17 THE WITNESS: No.

18 THE COURT: He wrote to you telling you why
19 he did that?

20 THE WITNESS: No, he never wrote to us.

21 THE COURT: So you can't say what is in his
22 mind. Your lawyer can argue why, but you can't tell us.

23 BY MR. WATSON:

24 Q. The signature page, this one is signed by
25 Mr. Heenan?

1 A. This is a different contract.

2 Q. No, this is the same contract, correct? This
3 is the Gloucester.

4 Turn to the end of that page. 76 is what we're
5 on. It's on Page 1117.

6 This is the signature page for this contract on
7 the screen; is that right, Mr. Aloia?

8 A. Yes.

9 Q. Who signed that?

10 A. Again, Alex McCourt as the business manager.

11 Q. That's the wrong one. There are two
12 contracts in that exhibit, sorry, on August 6th,
13 signed by Alex McCourt, and then signed by Mr. Heenan
14 for his own company with a dba that you never knew
15 of, correct?

16 A. Correct.

17 Q. Was he authorized to do this?

18 A. I mean, he's the owner of Heenan Holdings.

19 Q. Was he authorized to hold himself as a
20 principal of Decus Construction?

21 A. Again, I don't know the legalities. He had
22 created a dba of our company under a holding company,
23 so we didn't give permission to use our trade name.

24 Q. Great point. Did you ever give him
25 authorization to put your name on this contract in

1 this manner?

2 A. Decus Construction, no.

3 THE COURT: Is this a good time to break?

4 Ladies and gentlemen, we have put in a full
5 day, especially you who came earlier to be selected for
6 jury. I usually like to let you go earlier the first
7 day, three minutes earlier.

8 Thank you for your patience today. We will
9 start again tomorrow at 9:00 sharp. The lawyers and the
10 witnesses will be ready at 9:00 sharp.

11 Again, you're only seeing a piece of the
12 puzzle, right? Please do not do any research tonight.
13 Don't try to find out the answer on the Internet.

14 We will be back again tomorrow morning to begin
15 at 9:00, and the lawyers will move through the case.
16 There are a lot of facts here, and I appreciate your
17 patience and your understanding. I wish you the best
18 for the evening.

19 Thank you very much.

20 (The jury exited the courtroom
21 at 5:00 p.m.)

22 THE COURT: Sir, while you can look at any
23 documents you wish, you cannot consult with anybody
24 concerning your testimony tomorrow. So whatever you
25 wish to do, you can talk about anything else, but you

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215-460-1511

1 can't prepare with anyone or talk to anyone concerning
2 your testimony for tomorrow.

3 Do you understand that, sir?

4 THE WITNESS: Understood, yes.

5 THE COURT: Good, thank you. You may step
6 down.

7 Anything further counsel, for 9:00 then?

8 MS. LAVAN: One thing I have are the
9 documents.

10 THE COURT: I'll look at them overnight.

11 Does counsel have them?

12 MS. LAVAN: I didn't want to give them to
13 him until I okayed it with you, but I'll give it to him
14 now.

15 THE COURT: Give them a copy, and I'll have
16 a copy.

17 (The Court adjourned the proceedings at
18 5:00 p.m.)

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I N D E X

WITNESS NAME	DIRECT	CROSS	REDIRECT	RECROSS
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By Mr. Watson	12			
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MARK HEENAN

By Ms. LaVan	20			
By Mr. Watson			114	

THOMAS ALOIA

By Mr. Watson	135			
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C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

Date

Gregg B. Wolfe, R.P.R., C.M.

<p>BY MR. WATSON: [24] 12/23 17/16 20/6 114/19 116/9 116/18 121/17 123/6 128/4 135/2 139/18 142/6 142/16 153/8 154/24 157/6 158/20 159/11 172/20 173/14 176/7 177/18 178/4 182/22</p> <p>BY MS. LAVAN: [42] 20/17 23/19 25/3 32/6 34/7 35/9 37/15 45/13 46/10 49/16 53/13 55/19 56/6 57/4 58/1 60/19 61/17 63/24 65/17 69/15 76/21 77/21 78/5 78/18 83/23 84/4 86/8 86/22 89/2 89/14 91/21 93/22 97/5 99/13 100/8 102/17 104/8 107/22 108/15 109/20 111/11 112/6</p> <p>MR. WATSON: [58] 2/5 2/7 12/18 17/14 20/22 20/24 22/19 31/24 33/14 46/5 49/8 49/11 53/10 55/17 55/23 56/14 62/25 64/19 69/13 76/18 77/18 77/24 83/14 85/22 86/16 88/25 89/4 89/12 91/14 91/19 92/18 100/12 102/15 107/15 108/19 110/7 110/15 110/21 112/4 113/21 114/7 115/23 121/10 121/14 134/13 134/23 139/14 142/4 153/6 157/5 158/19 159/3 172/15 172/18 173/10 175/24 178/1 182/5</p> <p>MS. LAVAN: [31] 12/7 20/8 20/13 20/15 25/2 45/12 56/5 57/25 58/22 59/21 60/1 60/6 60/10 60/13 78/14 84/2 89/8 96/17 100/3 108/24 109/8 111/10 114/3 128/1 134/16 172/12 177/25 178/3 182/9 185/7 185/11</p> <p>THE COURT: [138]</p>	<p>2/3 2/6 12/3 12/9 12/20 19/10 19/19 19/22 20/9 20/14 20/23 20/25 21/4 22/21 23/16 25/1 32/1 32/3 33/15 33/18 35/5 37/5 37/7 44/1 44/8 44/22 45/2 45/6 45/8 49/9 49/12 53/12 55/18 55/25 56/16 57/16 57/23 58/20 58/23 59/25 60/4 60/9 60/12 60/15 61/14 63/1 63/7 63/13 63/16 63/20 64/20 64/25 65/5 65/9 65/15 76/20 77/19 77/25 78/11 78/13 78/15 83/15 84/1 85/19 85/23 86/2 86/6 86/18 89/1 89/5 89/13 91/15 91/20 92/21 96/16 96/18 98/24 99/2 100/5 100/7 100/13 100/18 101/6 102/10 102/16 104/4 104/7 107/16 107/24 108/9 108/21 109/1 109/5 109/10 110/8 110/16 110/24 112/5 114/5 114/9 116/2 116/17 121/11 123/4 128/2 134/14 134/17 139/13 139/16 142/15 154/20 154/22 158/6 158/13 159/2 172/14 172/16 172/19 172/22 173/1 173/4 173/8 173/13 175/22 175/25 177/2 177/7 177/11 177/15 182/6 182/10 182/17 182/20 184/2 184/21 185/4 185/9 185/14</p> <p>THE WITNESS: [73] 19/12 19/21 19/23 21/3 21/6 22/22 32/2 33/17 33/19 35/6 37/6 37/8 44/21 45/5 46/6 55/24 56/4 57/2 57/19 59/4 61/16 63/5 63/12 63/14 63/18 63/23 64/24 65/3 65/8 65/13 78/4 78/12 78/17 83/16 84/3 85/20 85/25 86/3 86/7 89/7 89/10 92/19 92/22 96/19 98/25 99/3 100/6 100/17 100/19 101/7</p>	<p>102/12 104/5 107/17 110/9 110/20 113/22 115/25 121/13 154/21 154/23 159/4 172/25 173/3 173/5 176/2 177/5 177/9 177/14 177/17 182/7 182/16 182/19 185/3</p> <p>\$</p> <p>\$100 [4] 90/19 144/9 146/18 147/3 \$100 million [3] 144/9 146/18 147/3 \$100,000 [2] 61/4 105/21 \$11 [5] 106/16 106/18 106/24 106/25 119/13 \$11 million [5] 106/16 106/18 106/24 106/25 119/13 \$128,137 [1] 130/11 \$17,000 [1] 52/9 \$17,005.04 [1] 53/8 \$170 [1] 113/14 \$170-some-thousan d [1] 113/14 \$187,000 [2] 130/19 130/21 \$2.4 [2] 105/3 113/7 \$2.4 million [2] 105/3 113/7 \$21,000 [1] 49/22 \$21,448 [1] 50/16 \$213,000 [1] 131/2 \$25,000 [2] 117/1 118/2 \$25,023 [2] 165/11 166/7 \$28,023 [1] 166/6 \$30,000 [2] 162/21 166/11 \$35,000 [2] 105/18 166/13 \$36,300 [1] 166/16 \$4.2 [1] 107/20 \$4.2 million [1] 107/20 \$400,000 [2] 112/13 120/22 \$44,109.20 [1] 166/19 \$46,900 [2] 163/17 165/11 \$5 [1] 113/16 \$5 million [1] 113/16 \$50,000 [1] 116/25</p>	<p>\$53 [1] 144/8 \$53 million [1] 144/8 \$53,000 [9] 82/3 82/4 82/8 84/22 93/6 93/7 126/3 126/16 129/12 \$53,090.29 [1] 92/17 \$6 [1] 22/16 \$6 million [1] 22/16 \$631.27 [1] 113/24 \$650,000 [1] 112/15 \$750 [6] 6/17 34/6 51/17 147/15 148/16 151/17 \$8 [1] 106/24 \$8 million [1] 106/24 \$876,000.06 [1] 113/24 \$9,000 [1] 52/15 \$9,005.04 [1] 53/17 \$9,005.54 [1] 94/3 \$9,055.54 [1] 94/2</p> <p>'</p> <p>'09 [1] 136/22 '14 [2] 26/16 26/17 '15 [3] 25/10 67/20 142/9 '16 [2] 133/6 157/5 '97 [1] 135/10</p> <p>0</p> <p>0376 [2] 46/8 113/23 0377 [2] 47/9 47/25 0546 [1] 69/15 0590 [1] 53/5 0723 [1] 97/8 08057 [1] 1/21</p> <p>1</p> <p>1,500 [1] 151/16 100 [2] 159/23 159/23 100 percent [2] 39/11 77/3 100-percent [1] 105/2 100-something-doll ar [1] 103/18 101 degrees [1] 81/2 103 [1] 117/10 107 [2] 153/8 153/13 10th [1] 78/21 110 [1] 130/5 1102 [3] 159/15</p>	<p>159/15 159/16 1104 [2] 159/9 159/14 1106 [1] 181/20 1117 [1] 183/5 113 [1] 140/16 1153 [1] 139/16 11:15 [1] 2/3 11th [1] 178/18 12 [4] 45/25 46/7 113/20 113/23 12-month [1] 143/13 1234 [1] 1/24 127 [1] 29/13 12:15 [1] 44/3 12:15 p.m [1] 44/8 12:20 p.m [1] 44/25 13 [2] 21/14 142/6 135 [1] 233/10 13th [5] 58/14 67/20 87/15 91/6 169/22 14 [1] 21/14 14,000 [1] 51/21 15 [1] 137/22 150 [1] 136/11 1511 [1] 1/25 16 [3] 21/17 47/10 65/21 16-CV-5849 [1] 1/7 16th [4] 32/20 68/9 117/12 117/25 17,000 [3] 52/10 53/10 53/15 17,000-about [1] 53/8 18 [2] 90/25 105/4 18th [2] 29/17 95/7 19 [1] 92/8 19106 [1] 1/25 19422 [1] 1/17 19th [2] 5/9 6/7 1:00 [4] 44/5 44/23 45/2 45/8 1st [6] 15/24 33/22 38/18 80/2 96/10 133/2</p> <p>2</p> <p>2.4 million [2] 104/16 104/18 20 [3] 81/14 145/14 147/16 20 percent [2] 148/21 149/2 20-percent [2] 148/19 149/8 20/20 [1] 81/14 200 [2] 1/16 135/16 200 percent [1] 144/10</p>
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<p>2</p> <p>2000 [1] 86/7</p> <p>2002 [1] 135/10</p> <p>2009 [3] 23/1 24/8 135/16</p> <p>2010 [3] 25/7 41/1 86/6</p> <p>2011 [3] 42/6 100/24 101/1</p> <p>2012 [1] 101/2</p> <p>2013 [2] 2/22 88/2</p> <p>2014 [2] 137/5 137/5</p> <p>2015 [17] 6/7 8/19 15/24 18/11 26/14 30/17 31/5 33/8 37/7 57/8 95/10 96/1 98/17 138/13 144/9 144/15 176/4</p> <p>2016 [30] 3/13 5/9 5/20 8/18 10/8 29/17 29/19 38/18 41/23 41/25 48/15 52/13 53/22 53/24 83/13 86/8 95/10 95/10 95/17 95/18 96/10 102/12 117/25 123/17 133/14 156/16 169/22 176/5 178/18 179/8</p> <p>2017 [1] 144/16</p> <p>2018 [1] 1/11</p> <p>205 [1] 181/21</p> <p>21 [1] 94/7</p> <p>21,443 [1] 94/9</p> <p>215 [1] 1/25</p> <p>22 [3] 172/11 173/1 173/12</p> <p>22,000 [2] 94/5 94/7</p> <p>22nd [2] 81/20 176/4</p> <p>23 [3] 78/11 78/15 78/16</p> <p>24-hour [1] 22/18</p> <p>24th [7] 37/22 57/8 57/20 77/3 98/17 150/6 150/14</p> <p>25 [3] 1/11 145/24 147/16</p> <p>26 [6] 67/15 67/15 78/12 78/13 78/16 83/25</p> <p>26th [21] 5/20 10/8 71/7 77/4 82/13 83/13 84/1 86/24 89/19 92/1 95/7 102/12 123/17 124/25 160/13 161/6 161/20 164/5 167/1 167/3 179/13</p>	<p>27 [5] 57/6 60/12 63/6 150/6 153/7</p> <p>271 [1] 1/20</p> <p>27th [3] 35/20 35/21 69/20</p> <p>28th [3] 37/4 71/7 96/23</p> <p>29 [2] 52/17 79/17</p> <p>29th [1] 96/21</p> <p>2:30 [2] 100/6 108/1</p> <p>2:30 p.m [1] 108/7</p> <p>2:45 p.m [1] 108/9</p> <p>2nd [1] 80/2</p> <p>2nd of [1] 15/24</p> <p>3</p> <p>30 [1] 168/15</p> <p>30 percent [2] 60/24 151/20</p> <p>30,000 [1] 165/9</p> <p>32 [3] 172/5 172/7 173/13</p> <p>32-or-so-thousand [1] 51/21</p> <p>33 [1] 82/17</p> <p>33 percent [2] 39/9 71/23</p> <p>331 [1] 173/16</p> <p>334 [2] 83/25 84/3</p> <p>34 [3] 174/15 175/2 178/2</p> <p>37 [2] 64/3 64/14</p> <p>38,000 [1] 48/20</p> <p>3:31 p.m [1] 91/5</p> <p>3D [2] 148/1 148/4</p> <p>4</p> <p>4 million [1] 104/21</p> <p>4.2 million [1] 104/14</p> <p>40 [2] 23/2 145/25</p> <p>41 [1] 87/11</p> <p>42 million [1] 144/15</p> <p>450 [1] 1/16</p> <p>460-1511 [1] 1/25</p> <p>47 [4] 6/2 145/16 146/6 155/6</p> <p>48 [1] 157/4</p> <p>4:00 p.m [1] 158/11</p> <p>4:15 p.m [1] 158/13</p> <p>4th [1] 133/10</p> <p>5</p> <p>50 [2] 23/2 70/15</p> <p>50 percent [2] 39/10 43/25</p> <p>50,000 [1] 118/7</p> <p>50-percent [3] 81/9 104/15 138/18</p> <p>500 [1] 73/13</p> <p>51-percent [1]</p>	<p>39/17</p> <p>54 [1] 178/4</p> <p>57 [1] 90/25</p> <p>58 [1] 95/1</p> <p>58,000 [2] 43/17 43/18</p> <p>5849 [1] 1/7</p> <p>59 [2] 96/9 96/18</p> <p>5:00 [1] 158/10</p> <p>5:00 p.m [2] 184/21 185/18</p> <p>5th [2] 128/13 132/14</p> <p>6</p> <p>6 percent [1] 119/12</p> <p>601 [1] 1/24</p> <p>607 [2] 175/5 175/7</p> <p>63 [2] 65/15 65/19</p> <p>66 [4] 131/22 172/4 180/10 180/11</p> <p>68 [2] 165/22 165/23</p> <p>6th [1] 183/12</p> <p>7</p> <p>701 [1] 95/5</p> <p>709 [1] 181/24</p> <p>74 [3] 158/20 158/22 159/13</p> <p>750 [1] 52/11</p> <p>76 [2] 181/19 183/4</p> <p>779 [1] 165/25</p> <p>780 [1] 166/6</p> <p>7:06 p.m [1] 84/7</p> <p>7:35 [2] 87/14 87/17</p> <p>7th [2] 133/5 133/13</p> <p>8</p> <p>8-megawatt [1] 48/4</p> <p>8.17 [1] 48/10</p> <p>80 [1] 139/15</p> <p>86 [1] 165/6</p> <p>8:00 at [1] 35/23</p> <p>8:00 p.m [1] 93/25</p> <p>8:37 p.m [1] 79/18</p> <p>8:49 [1] 70/13</p> <p>8:49 a.m [1] 70/9</p> <p>8th [1] 82/21</p> <p>9</p> <p>9-15-16 [1] 47/10</p> <p>90 percent [1] 74/8</p> <p>92,000 [1] 43/18</p> <p>9:00 [1] 184/15</p> <p>9:00 sharp [2] 184/9 184/10</p> <p>9:00 then [1] 185/7</p> <p>9th [1] 179/8</p>	<p>A</p> <p>a.m [2] 2/3 70/9</p> <p>abide [1] 180/13</p> <p>ability [1] 13/18</p> <p>able [9] 3/15 7/8 7/14 31/21 68/22 144/24 147/5 172/14 178/16</p> <p>about [168] 4/3 4/22 5/1 5/1 5/2 5/2 5/8 5/16 6/19 7/4 7/5 7/9 7/10 7/19 8/3 8/5 10/7 10/14 10/14 10/16 11/18 12/16 13/7 14/6 14/25 17/4 20/20 22/16 24/18 25/24 29/2 29/18 32/22 33/12 34/24 35/11 37/12 38/4 40/19 42/23 43/15 43/17 44/11 44/13 44/15 44/18 45/4 45/5 47/2 49/7 51/5 51/20 52/8 53/8 53/20 57/18 63/11 63/22 67/3 68/2 69/22 70/15 71/16 72/17 72/18 72/25 73/12 73/21 77/5 80/3 90/5 92/5 93/13 93/13 93/24 96/23 96/24 97/11 97/22 98/15 99/5 99/9 100/2 101/14 101/23 101/25 104/13 104/16 105/3 105/16 105/20 105/21 107/20 108/2 108/10 110/11 111/24 112/12 112/15 113/7 113/16 113/17 113/20 114/16 115/15 115/16 115/25 117/9 121/13 127/6 128/9 131/17 133/10 133/13 135/15 135/16 135/20 136/11 137/13 137/19 137/22 140/5 140/7 140/8 140/24 141/2 141/4 141/5 141/11 141/23 141/24 143/15 145/14 145/18 146/11 146/12 149/19 149/25 150/2 150/16 151/13 153/4 153/22 153/24 156/9 157/25 158/18 159/6 159/7 159/7 159/9 159/18</p>	<p>159/25 160/14 160/17 162/3 162/8 164/15 167/4 167/22 169/23 169/25 170/2 174/20 176/2 179/10 180/23 184/25</p> <p>about me [1] 99/5</p> <p>above [3] 94/1 177/1 233/19</p> <p>above-entitled [1] 233/19</p> <p>absolutely [6] 28/22 65/9 66/13 66/20 99/18 131/12</p> <p>acceptable [1] 93/12</p> <p>accepted [1] 109/10</p> <p>access [3] 92/2 141/18 143/15</p> <p>accomplished [1] 137/20</p> <p>accomplishment [1] 168/17</p> <p>accomplishments [1] 144/7</p> <p>according [8] 6/22 28/7 64/16 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